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***Journal of Liberty and International Affairs*** is oriented towards a wide audience of interested fellow specialists, geared towards informing policy-makers and social workers, and to engage students. It is opened to any researchers, regardless of their geographical origin, race, nationality, ideological affiliation, religion or gender, as long as they have an adequate manuscript. Due to the fact that the journal addresses a wide range of academics we encourage presentation of research to be made at a level where it is understandable to a broad audience. The editorial team encourages both established and early career researchers and doctoral students to take part in this journal in order to stimulate a greater exchange of ideas and knowledge.

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Indexing

Abstracting

## THE CURRENT REFUGEE CRISIS AND THE CHALLENGES FOR BULGARIA AS AN ENTRY GATE FOR THE EUROPEAN UNION

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### *Abstract*

*In this paper we analyze the effect of the current refugee crisis in South-Eastern Europe by making an emphasis on the Bulgarian migration policy. After discussing the legal part, concerning the migration processes in the country, we present the most recent statistics, related to the refugee's panorama in Bulgaria. Several current problems are analyzed such as the dynamics of the detainees at the borders and inside the country, the trafficking, the asylum applications and the corresponding decisions, as well as other aspects related to the specific migration policies and their management. Finally we discuss some recommendations for a better sustainability as well as some important geopolitical issues, related to the disadvantageous position of the country as a entry gate to the EU and the concern regarding the EU-Turkish agreement in migration and resettlement.*

*Key words: Bulgarian refugee crisis; Policies for protection and integration of refugees; EU-Turkey migration agreement*

## INTRODUCTION

The worldwide refugees and migration crisis is one of the major challenges for Europe and the World after the Second World War. According to a recent report of the International Organization of Migration (IOM 2015), there were about 19.5 million refugees worldwide at the end of 2014. About 14.4 million of them were under the mandate of UNHCR, which is around 2.9 million more compared to the previous year (UNHCR 2015a). The war in Syria caused over 4 million refugees. The average of about 300.000 refugees per year in the EU during the period 1994-2002, has been replaced by an arrival of asylum seekers, reaching 663.000 in 2014 and almost 1.005.500 in December 2015 (IOM

2015a, b). 970.000 refugees arrived in Europe by crossing the Mediterranean. The major part of them has reached Greece and Italy, while Spain, Cyprus and Malta have been less affected (MPI 2015). Another 30.000 arrived in Bulgaria from Turkey by land.

In 2016, the influx of migrants in the Balkans fell sharply, but the problems are still present. During the spring of 2016, the Macedonian police stopped the route of more than 7.000 migrants from the Greek camp of Idomeni to continue their way to Western Europe. After closing the Balkan route from Turkey across Greece, Macedonia, Serbia, Hungary and Austria to Germany in March 2016, more than 70.000 migrants remained in Southeastern Europe. Thousands of them have arrived to Greece by sea from Turkey most and most of them have entered before the series of closure of the European borders. Now Greece is facing one of its major challenges taking care of more than 60.000 refugees and immigrants at its territory.

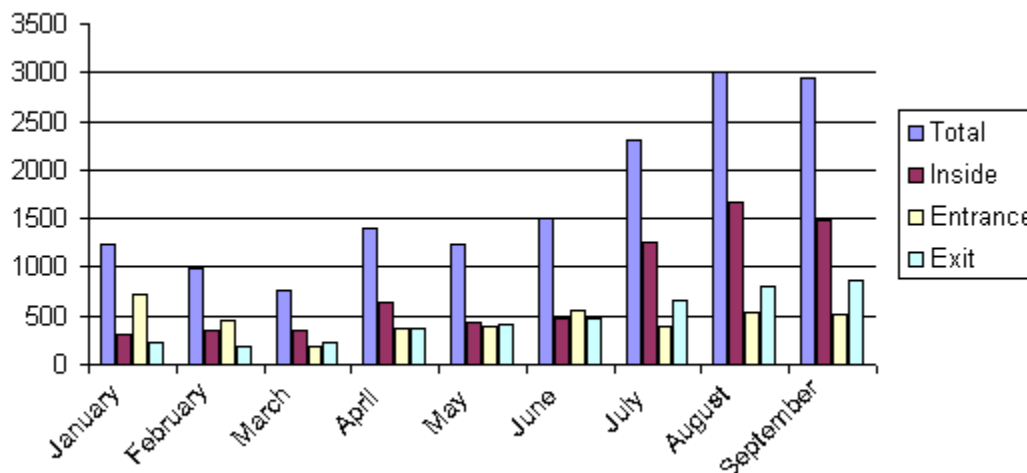
At the end of 2016, the number of asylum seekers in Serbia, who are trying to reach Western Europe was around 7.000 (UNHCR-Serbia 2016). Even succeeding to enter in Serbia, most of the migrants are trapped in Hungary because of the daily quota of 30 immigrants. Moreover, a law entered into force in Hungary in July 2016, allowing the Hungarian police to push back illegal immigrants who were detained within a strip up to eight kilometers from the country's southern border with Serbia. Slovenia, from its side, decided in autumn 2016 to build a new fence panels on its border with Croatia in order to prevent any uncontrollable influx of new migrants, and announced that the border control will be tighter. Romania was one of the countries that have opposed the EU Commission's proposal for mandatory quotas for the admission of refugees. However, the country has agreed to implement the decisions of the European Union to accept 4.180 refugees in the period 2015-2017.

At the end of 2016, more than 3 millions of Syrian refugees live in Turkey, apart the rest of the refugees and immigrants coming from Afghanistan, Pakistan, Iraq and other countries. Most part of them is willing to continue their route to Western Europe (Bitoulas 2015, UNHCR-Turkey 2016). This is a challenging situation for Bulgaria, which has a common border with Turkey. The country is in a delicate situation as since 2014, there is an increased tendency of entrance of illegal migrants in its territory. The refugee crisis and its effect in several countries have been on the focus of numerous research and policy analysis (Ayoub 2014, Bardens 2014, Ostrand 2015, Koroutchev 2016). Problems such as Asylum applications and First instance decisions have been discussed by comparing how different countries have responded on this big challenge (Costello 2014, Kerwin 2014, Bitoulas 2015). Many attempts have been also done concerning the question of livelihood opportunities for refugee population by using lessons from past practices (Campbell 2006, Saltsman 2014, Berg 2015, Harild 2015, Stefanovic 2015, Jacobsen 2016).

In this paper we discuss several problems concerning the Bulgarian migration, mainly related to the refugees and immigrants' influx, the government and society reactions and the possible policies for better integration and further opportunities for the refugees in the country. In Section 2 we present some relevant statistics concerning the illegal detainees in Bulgaria, which serves as a basis of our working hypothesis. In Section 3 we discuss the legal regulation of the refugees and immigrants in the country. In Sections 4 and 5 we analyze the situation of the refugees and the long-term trends of the current migration situation in Bulgaria, thus arguing our initial hypothesis. Finally our main conclusions are presented in Section 6.

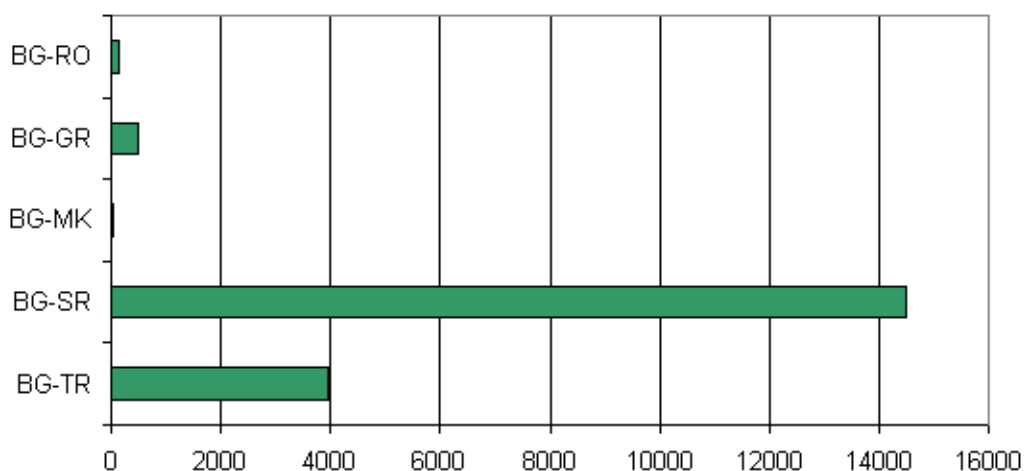
## **BULGARIA AS AN ENTRY GATE OF THE REFUGEES TO THE EUROPEAN UNION**

Bulgaria has a common border with Turkey that poses the country in some disadvantage situation regarding the eventual control of the refugee flows. Actually, during 2015, Bulgarian authorities have detained 27.000 foreign citizens, who had crossed illegally into the country. Some 10.400 of them have been detained at the country's border with Turkey, which represents an increase of more than 70% compared to 2014. According to Bulgarian Border Police (BBP) data, the number of illegal migrants detained in 2015 at Bulgaria's border with Greece increased by more than 40%, compared to the previous year. More than half of the migrants, who illegally entered in Bulgaria and were detained by the Bulgarian authorities in 2015, arrived from Syria, followed by migrants from Iraq, Afghanistan, Pakistan, and Iran. Most of them were apprehended at Bulgaria's border with Serbia, which number has increased several times compared to 2014 (AIDA 2016, AIRM 2016, EUROSTAT 2016). Similar phenomena have been observed also in 2016 (Figure1). As we can see, during the first months of 2016, the total detained illegal immigrants were almost 1.000 persons per month, increasing along the second and third quarter up to 3.000.



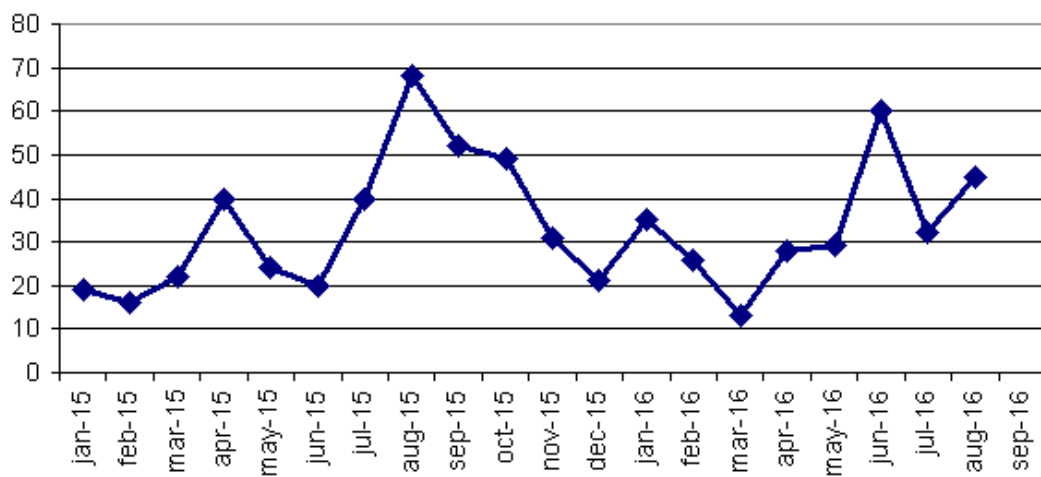
**Figure. 1. Detainees without registration at the entrance and exit of the state border from the Ministry of Internal Affairs of Republic of Bulgaria during the period 01 - 09.2016 (BBP 2016).**

The majority of the detainees has been intercepted at the Bulgarian-Serbian border and at a lesser extends at the Bulgarian-Turkish border (Figure 2). The number of detainees at the Bulgarian-FYR of Macedonia border was negligible (less than 40 persons).



**Figure 2. Detained illegal immigrants at the different borders of Republic of Bulgaria during 2016 (BBP 2016).**

In general, the access to Bulgaria is considered difficult and the majority of the migrants succeed to enter after several attempts (UNHCR 2015b). As a consequence, the number of asylum seekers who entered through areas of official border crossing points increased up to 60% in 2015, compared to the previous year. The number of persons involved in traffic of illegal migrants has also increased despite the strong measures taken by the Bulgarian government. In the following figure it can be seen that during the Summer, due to the better climate conditions, the number of detained people accused of human trafficking in the territory of Bulgaria has increased several times (Figure 3).



**Figure 3. Identified and detained for illegal trafficking activities of the Bulgarian-Turkish border during the period 01.2015-08.2016 (BBP 2016).**

The above facts raise the question about the magnitude of the phenomena for a small country with limited resources like Bulgaria and the effectiveness of its migration regulation mechanism. Based on that, our working hypothesis will concern the capacity of the country an entry gate to the EU, by arguing its disadvantaged situation being a periphery state and having a common border with Turkey. For this aim we have used a methodology based on the collection and the corresponding analysis of a large data, offered on a regular basis, from the Bulgarian Border Police and the Bulgarian State Agency for Refugees. Before analyzing more deeply the refugee's situation in Bulgaria, we will briefly refer to the existing legal regulation and how it is implemented in the current context.

### ***Legal regulation of the refugees and immigrants in Bulgaria***

The special protection that the Republic of Bulgaria offers to foreigners under the Law on Asylum and Refugees (LAR 2005) includes Asylum, Refugee status, Humanitarian status and Temporary protection (SAR 2016, EPIM 2016). The asylum is granted to foreigners who are persecuted for their beliefs or activities in defense of internationally recognized rights and freedoms. The President grants asylum as well when considering that the state interests or special circumstances require that. The Chairman of the State Agency for Refugees (SAR) grants refugee or humanitarian status. According to the Law on Asylum and Refugees (LAR 2005):

- Refugee status is granted to a foreigner who is afraid of persecution because of his/her race, religion, nationality, membership of a particular social group or political opinion and/or belief, and for those reasons cannot or is unwilling to avail him/her of the protection of this country or return to it.
- Humanitarian status is granted to an alien forced to leave or remain outside the country due to death penalty or execution, torture or inhuman or degrading treatment or punishment or serious and individual threat against life or his/her personality as a civilian because of violence in situations of international or internal armed conflict.

Humanitarian status may be granted for other humanitarian reasons and for the reasons set out in the conclusions of the Executive Committee of the High Commissioner of the United Nations for Refugees.

The Council of Ministers grants a temporary protection established by decision of the Council of the European Union. Temporary protection is granted in the event of a mass influx of foreigners who are forced to leave their countries of origin because of armed conflict, civil war, foreign aggression, human rights violations or violence in large part of the country or in a separate area of it and for those reasons they cannot return there.

Finally, the residence in Bulgaria is regulated by the Law on Foreigners in the Republic of Bulgaria (LFRB 2007) and is provided by the Directorate of Migration of the Ministry of Interior. The rights and obligations of the foreigners having received protection are established by the Law on Asylum and Refugees. According to Article 20, it is not allowed to impose restriction of rights or privileges of foreigners seeking or having received protection in Bulgaria based on race, nationality, ethnicity, gender, national origin, religion, education, beliefs, political affiliation, personal or social status or wealth.

According to Article 23 paragraph 1 of LAR, foreigners seeking or having received protection are entitled to assistance and help from the representation of the UN High Commissioner for Refugees in Bulgaria, as well as other governmental or non-governmental organizations in all stages during the procedure and after being granted protection. A foreigner with a refugee status acquires the rights and obligations of Bulgarian citizens, except for the right to participate in elections for state and local authorities in national and local referendums, and to participate in the creation and to join political parties, to hold positions for which by law a Bulgarian citizenship is required, to be a soldier or other restrictions expressly provided by law.

A foreigner with humanitarian status has the rights and obligations of a foreigner permanently residing in Bulgaria.

A foreigner, who under the terms and provisions of the Law on Asylum and Refugees is granted asylum, refugee status, humanitarian status or temporary protection, may request to reunite with his/her family in Bulgaria. The authorization for family reunification is given by the Chairman of the State Agency for Refugees.

Family members of the alien are issued a permit for continuous residence after permission for family reunification issued under the terms and provisions of the Law on Asylum and Refugees. The residence permit has a term of one year with the possibility of renewal, without exceeding the duration of residence of the holder, according to Article 25b of the above cited Law on Foreigners in the Republic of Bulgaria.

After the decision for granting status, foreigners with refugee or humanitarian status can be included in the National Program for Integration of Refugees in Bulgaria, which is implemented by the Integration Center of the State Agency for Refugees. The program provides measures and actions to support the process of adaptation and integration of beneficiaries in the first year following the decision on status (SAR 2016, AIRM 2016).

The support under the National Program for Integration is bound by mandatory attendance of courses in Bulgarian language, social and cultural integration and courses for acquiring professional skills. The children included in the program, between the ages of 7 to 16 years old, are required to attend regular training courses in Bulgarian language or to continue their education in official state schools.

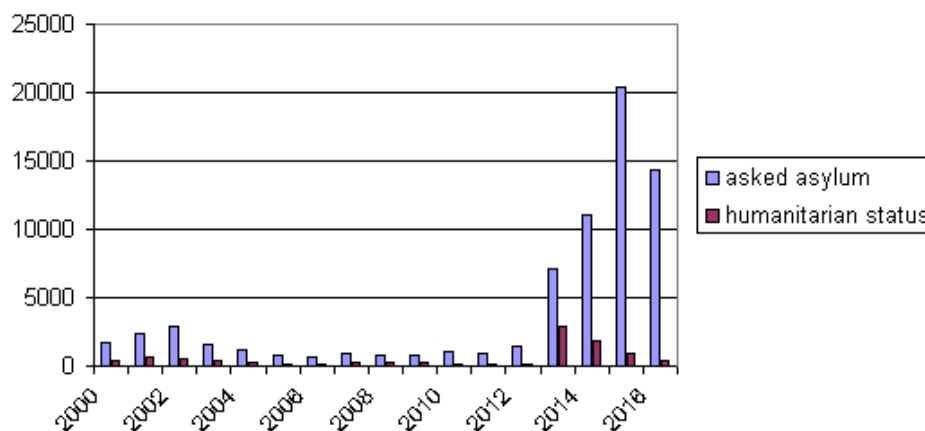
### ***Situation of the refugees and immigrants in Bulgaria***

In general, the determination procedure and the asylum application process are considered slow in Bulgaria. Several NGO reported about the lack of trained staff and the lack of funding for interpretation services during the asylum procedure. This situation was temporally improved by the finance aid from the European Commission, which also contributed for some improving of the living conditions and the health care at the refugee centers. Although all these improvements, the duration of the determination procedure is still very slow compared to other host European countries (AIDA 2016).

During 2015, refugee status was granted to non-Syrian nationals in only 4% of decisions. As a result, 90% of those who had applied for asylum left Bulgaria prior to receiving their decision, thus 95% of determination procedures were stopped and 88% were terminated. While Bulgarian, European and international law require individualized assessment of each claim and a fair procedure, it appears that the claims from a number of countries, such as Afghanistan, Iran, Pakistan and African countries, are refused in most

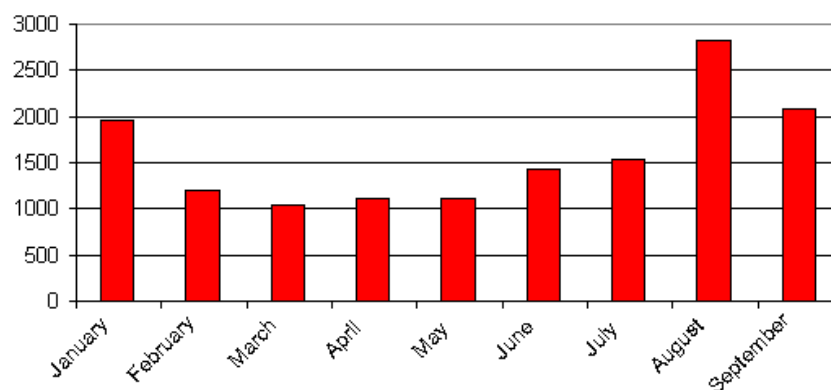
cases. In 2015, the success rate in percentage by top asylum claim countries, regarding refugee and humanitarian status, was the following: Afghanistan – 0.1%, Algeria – 2.4%, Iran – 1.8%, Iraq – 2.5%, Pakistan – 0%, Syria – 76%, Africans – 4.7% (SAR 2016).

The statistics for the asylum seekers in Bulgaria and those who received humanitarian status along the last 16 years is given at the following Figure 4. From almost an insignificant number of refugees and a very low number of received humanitarian status at the beginning of the decade of 2000, a significant increase has been observed after 2013, showing a strong peak in 2015 with more than 20.000 refugees having applied for asylum in Bulgaria.



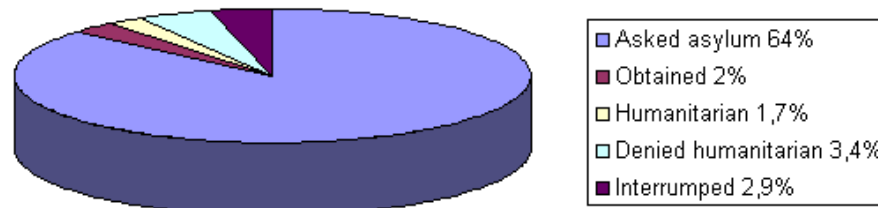
**Figure 4. Number of refugees that have applied for asylum in Bulgaria and receiving humanitarian status during the period 2000 – 09, 2016 (SAR 2016).**

The evolution of the number of refugees, who applied for asylum during 2016, is given in Figure 5. A strong increase of the number of refugees is observed during the summer.



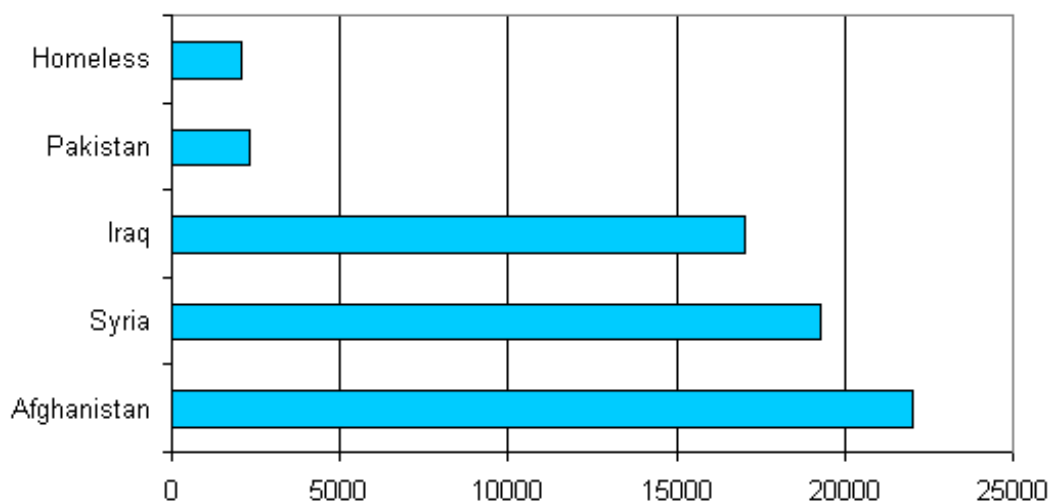
**Figure 5. Number of refugees/month who have applied for asylum in Bulgaria during the period 01 – 09, 2016 (SAR 2016).**

The statistics concerning the people who have applied for asylum, those who have obtained asylum and humanitarian status, those whom humanitarian status has been denied and those in situation of interrupted procedure in represented in Figure 6. The major group, presenting 64% of the refugees, corresponds to asylum seekers.



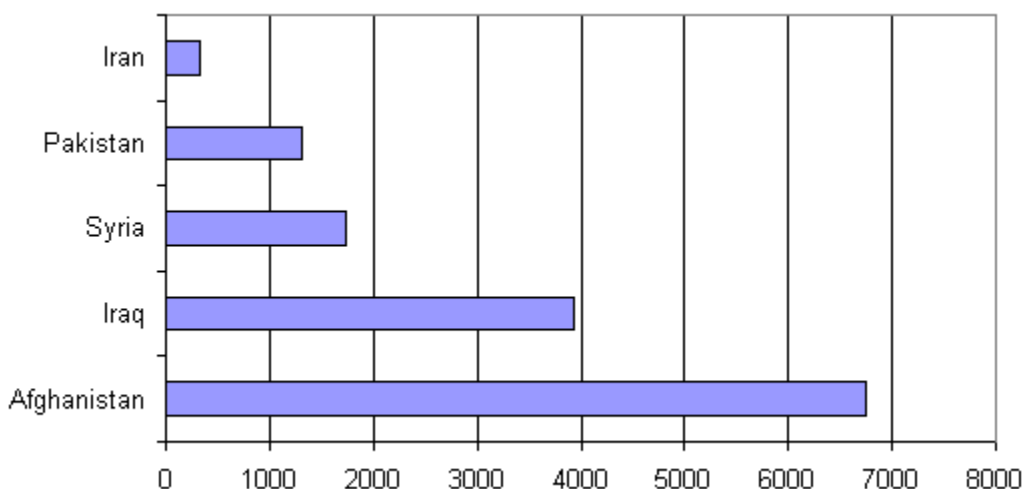
**Figure 6. Number of immigrants who have applied for asylum in Bulgaria and corresponding decisions in 2016 (SAR 2016).**

In the following two figures we represent the number of the refugees from the top 5 countries, having applied for asylum in Bulgaria since 1993 (Figure 7), with the major group from Afghanistan, followed by Syria and Iraq, and the corresponding statistics for 2016 (Figure 8). Again, the major group comes from Afghanistan, followed by refugees coming from Iraq and Syria.



**Figure 7. Number of refugees who have applied for asylum in Bulgaria during the period 01, 1993 – 09, 2016 (top 5 countries) (SAR 2016).**

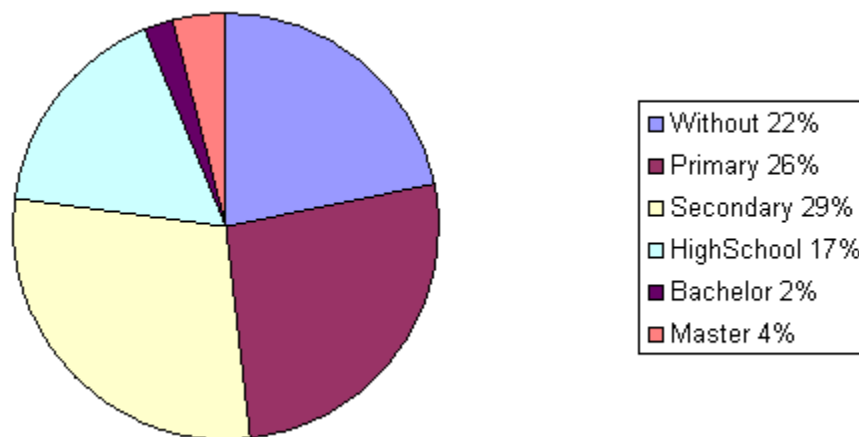




**Figure 8. Number of refugees who have applied for asylum in Bulgaria during the period 01 – 09, 2016 (top 5 countries) (SAR 2016).**

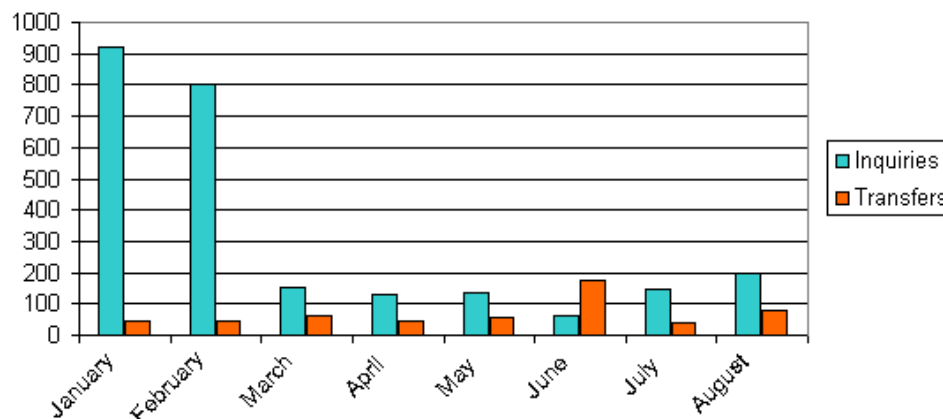
The percentage of refugees by gender/minors, applied for asylum in Bulgaria during 2016, shows that the major group of refugees is formed by males (57%), followed by children (32%) and females (11%).

The number of refugees applied for asylum in Bulgaria during September 2016, according to their education status is represented in Figure 9. The biggest group corresponds to the refugees with secondary education (29%), followed by those with primary education (26%) and the refugees without any education (22%). The number of refugees with Bachelor and Master Degrees is very low, 2% and 4% respectively.



**Figure 9. Type of education of the refugees applied for asylum in Bulgaria during September 2016 (SAR 2016).**

Finally, the number of refugees under inquiries and transfer according to the Dublin regulation (DUBLIN 13) in Bulgaria during the period January-August 2016 is represented in Figure 10.



**Figure 10. Inquiries and transfers under Dublin regulation in Bulgaria during the period 01 – 08, 2016 (SAR 2016).**

Some slight increase of the transfers is observed during the last few months, probably due to the improvement of the European migration policies. The above analysis clearly shows the difficult situation in terms of migration management although the Bulgarian government and non-government attempt to tackle the current situation.

Our initial working hypothesis can be also argued on the concern regarding country's immigration capacity, which is directly related to the accommodation capacity at the reception centers. As can be seen from Table 1, the offering of 5.130 places is relatively modest, although the national asylum agency claims to be able to accommodate up to 7.000 individuals and to have additional 800 accommodations in mobile modules.

**Table 1. Capacity of the Centers for reception in Bulgaria (SAR 2016).**

Centre	Location	Capacity
Sofia	Sofia	2.030
Ovcha Kupel shelter	Sofia	860
Vrazhdebna shelter	Sofia	370
Voenna Rampa shelter	Sofia	800
Banya	Central Bulgaria	70
Pastrogor	South-Eastern Bulgaria	320
Harmanli	South-Eastern Bulgaria	2.710
<b>Total</b>		<b>5.130</b>

Although the efforts from the part of the State Agency for Refugees, there are important problems related to the safeness and integration of the refugees and mainly of the minors. One of the more worrying effects of the refugee crisis is the increasing number of unaccompanied minors. In September 2016, a total of 142 children have been registered in Bulgarian detention centers and many of them were alone. They were not accompanied by parents or members of their families, but related to other adults who were mainly representatives, selected randomly among municipal employees (MINORS 2016).

The situation in the detentions centers is in the focus of several observers from different official institutions and NGO's. The increase of the number of refugees, the small capacity on those centers in the territory of Bulgaria and the reduced experience in terms of migration and refugees policies by the official representatives has lead to an increase of the tension in some of the centers. An expression of these phenomena was the recent refugee's riot in Harmanli detention center at the end of November 2016.

Apart the above mentioned difficulties and problems, it is expected that with the recent financial aid from the European Commission, the communication equipments will be improved and three new centers will be constructed, that will alleviate the living conditions of the immigrants.

In general terms, it is believed that the assistance from the part of the countries has been not sufficient and did not address the long-term integration needs for refugees (Betts 2015, Papademetriou 2016a). Several improvements could be done in relation to offer better opportunities to them. Further steps could be related to the application of tech entrepreneur ideas for supporting refugee integration in community-based housing and service issues such as distance education or credential recognition among others (Collett 2014, Benton 2016).

It is evident that the magnitude of the events is much larger due to the arising problems at a European level as well. Indeed, the comparison between Bulgaria and the other EU countries shows that regarding the first instance decisions by outcome and recognition rate of the EU countries, corresponding to the second quarter of 2016 (Table 2), the total rate of recognition in Bulgaria was 52%, being slightly below the average rate for the EU-28 – 59%. The maximum rate of 83% corresponds to Malta and the minimum one of 10% - to Hungary.

**Table 2. First instance decisions in the EU by outcome and recognition rates, 2nd quarter 2016 (Eurostat 2016).**

Country	Total decision	Positive	Refugee status	Subsidiary protection	Humanitarian reasons	Rejected	Total rate recognition %
<b>EU 28</b>	234440	137855	85865	45015	6975	96585	59
<b>Belgium</b>	6920	4385	3465	920	-	2535	63
<b>Bulgaria</b>	435	230	115	110	-	210	52
<b>Czech Rep.</b>	405	130	40	90	0	275	32
<b>Denmark</b>	3150	2585	1750	830	5	565	82
<b>Germany</b>	117830	79450	56240	21960	1250	38380	67
<b>Estonia</b>	55	35	20	15	0	20	67
<b>Ireland</b>	420	100	95	5	-	320	24
<b>Greece</b>	2380	525	455	70	0	1855	22

<b>Spain</b>	2230	1565	65	1495	0	670	70
<b>France</b>	21845	7780	5130	2650	-	14065	36
<b>Croatia</b>	50	10	10	0	0	40	19
<b>Italy</b>	24360	9060	1475	3245	4340	15300	37
<b>Cyprus</b>	510	360	30	335	0	145	71
<b>Latvia</b>	50	20	10	10	-	25	45
<b>Lithuania</b>	40	15	15	0	0	25	34
<b>Luxembourg</b>	245	135	130	5	-	110	55
<b>Hungary</b>	1030	105	50	55	0	925	10
<b>Malta</b>	335	295	45	230	15	60	83
<b>Netherlands</b>	8210	6470	3275	3105	90	1740	79
<b>Austria</b>	10790	7635	6495	1050	90	3155	71
<b>Poland</b>	620	65	20	35	10	555	10
<b>Portugal</b>	110	45	20	25	-	65	41
<b>Romania</b>	250	120	95	30	0	125	49
<b>Slovenia</b>	65	40	25	15	-	30	58
<b>Slovakia</b>	25	15	0	5	15	5	71
<b>Finland</b>	4945	1555	935	410	210	3385	31
<b>Sweden</b>	19635	12650	3775	8275	595	6985	64
<b>UK</b>	7480	2475	2090	30	355	5010	33

The EU countries still receive a small amount of asylum seekers from the “front-line countries” such as Greece and Italy, from where most immigrants and refugees arrive. Until October 2016, about 160.000 people ought to be relocated, but only 8.000 were resettled.

In Italy, the number of immigrants, who arrived by boat, is almost as high as in 2015. In Greece, more than 60.000 people are housed in overcrowded and ill-equipped camps where they are waiting the decision on their asylum, resettlement or repatriation. It is obvious that a further approach to receiving and settling refugees in Europe is needed, in order to be sustainable and oriented to labor market and social integration, to be work-focused, proactive, coordinated and collaborative (Papademetriou 2016b).

### *Long-term trends*

The perspectives of the refugee crisis scenario and its impact on the Bulgarian society and politics in short and long-term time frames are related to the EU-Turkey relations. In March 2016, EU-Turkey signed an agreement to tackle the migrant crisis in a way that migrants arriving in Greece are expected to be sent back to Turkey if they do not apply for asylum or their claim is rejected. According to the agreement, for every Syrian migrant sent back to Turkey, one Syrian already in Turkey will be resettled in the EU. In this way it is hoped that the people will be discouraged to travel by sea from Turkey to Greece. In return, Turkey is expected to receive an aid and a political concession related to the drop of the visas requirements for Turkish citizens to travel to the EU. The agreement between the EU and Turkey attempts to check illegal migration and allows an entry into Europe only to the refugees registered earlier in Turkish territory.

From the Bulgarian point of view, this agreement is an opportunity to prevent possible re-directions of the refugee flows to the Greek-Bulgarian border, after closing the

Balkan route, without providing an alternative route to the refugees already arrived illegally in Greek territory. The transportation of registered refugees from Turkey to the end-destination countries in the EU by air is also a way to alleviate the pressure on the Bulgarian borders (IOM 2015, Kyuchukov 2016).


Apart the above mentioned arguments, there have been expressions of concern regarding the agreement from scholars, policymakers and politicians whether it is legal and if it will even work. According to E. Collett (2016) the agreement is a kind of displacement of the problem. Actually, the EU-Turkey deal is based on the events from the previous several months and the concern related to Schengen agreement rather than from a longer period. The complexity of the migration phenomena, accompanied by the limitations of protection capacity by the majority of the countries, points out that a next crisis in the EU will come sooner or later.

An eventual non accomplishment of agreement from the Turkish site will have inevitably a strong impact on the Bulgarian politics and society. From the current rates of illegal migration through Bulgaria, being relatively low and still manageable, such opening of the borders will conduct to a huge impact of the refugee crisis on Bulgarian society by the magnitude of its economic and social pressure. Now, at the current relatively low rate of illegal migration, the majority of the population believes that refugees represent a threat to the national security due to different ethnicity, culture and the lack of integration. Regular protests are organized not against the refugees, who escape from war conflicts, but against those who are profiting to cross illegally, as expression of fear from potential terrorist attacks (FAIR 2016). An eventual opening of the Turkish borders will conduct to a stronger concern and fears that could be rapidly transformed into xenophobic reactions against migrants and foreigners. This will have also a strong economic impact on the country as part of the GDP will be redirected for national security.

So far Turkey fulfills its commitments under the agreement with the EU despite the threats about an hypothetical abandon the deal. Currently around 80 immigrants come daily from Turkey to Greece, but Greece fails to return to Turkey a similar amount of people. The procedure for applications for political asylum in the Greek islands is slow, resulting inefficient, as only 95 people has been returned from the beginning of the agreement until the end of November 2016. After March 15, 2017, the pressure on Greece will even increase because of the recent European Commission decision, following the Dublin agreement, to returning to Greece of the refugees who have passed through the country after that date. This will make the European migration issues even more complex and away from control (MPC 2016).

As a general conclusion, the above analysis clearly argues that Bulgaria is in a disadvantaged position in the EU being a periphery state, an external border of the EU, having a common border with Turkey, and responsible for the security and the stability of the EU. If Turkey opens its borders for refugees, Bulgaria will be the first EU country that will face the magnitudes of such a decision. If similar events happen, the solidarity response from the other EU and neighboring countries will be crucial.

## CONCLUSION

In this paper we have analyzed the situation of the refugees in Bulgaria, paying attention to the most recent statistics offered by several official institutions. We have discussed several phenomena such as the illegal migration, the rate of petition of asylum and the corresponding decisions, the transfers under the Dublin regulation as well as some specifics of the profiles of the immigrants and refugees in the territory of Bulgaria. We have also analyzed the current problems related to the country's refugee centers of detention and the policies for protection, obligation and integration of refugees. Finally, we have discussed some future trends of the migration and refugee's phenomena related to the EU-Turkish agreement and how this might affect the Bulgarian migration policy in a short and long - term frame. 

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Indexing

Abstracting

## INTEGRATION IN THE EUROPEAN UNION AS A DOUBLE-EDGED SWORD FOR THE WESTERN BALKANS

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### *Abstract*

*By analyzing the impact of the economic crisis on the Western Balkan (WB) countries, the paper concludes that their export, inflow of remittances and FDI have suffered due to the crisis. Regarding the rapid credit growth in years before the crisis it spurred an increase in imports, which in context of relatively uncompetitive economies, led to increased current account deficits despite significant remittances and FDI inflows. The impact of the crisis in the region can be explained mainly by their degree of European integration. But, the European Union (EU) is more uncertain to embrace the economically weaker countries, causing loss of EU credibility. It seems that the EU integration is a double-edged sword for the WB: in good times EU delivers its prosperity, but at a time of crisis, it is creating instability.*

*Key words: economic crisis; transmission channel; Western Balkans; European Union*

## INTRODUCTION

Western Balkans is consisted of the following countries: Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia. Economically, the whole region lags behind the economic growth and development of the Western European countries. Politically, the reform process towards modernization and democratization of their society is moving slowly. In addition, this region is characterized by past ethnic conflicts, current unstable ethnic relations, lack of the rule of law, violation of territorial integrity and economic systems that constitute poor bases for further economic development. Moreover, the global financial crisis was experienced as a huge external shock for the WB. As their banking systems were not directly exposed to “toxic assets”, the crisis was transmitted to the region through a number of indirect channels. These included a contraction of international trade, a sudden stop of credit growth, a rapid fall in inflows of

foreign direct investments (FDI), and a rapid fall in remittances from migrant workers, each reflecting the impact of the global crisis in financial markets, goods markets, capital markets and labor markets. It is notable that these mechanisms mattered to different degrees in different countries in the region (Barlette and Monstiriotis 2010, 3-8).

Since the countries from the WB are highly dependent from the EU countries in terms of trade, investment and finance, this paper will try to give further clarification of the interdependence in “good” and in “bad” times. The “good” tangible achievement is that most of the countries are on a path towards EU accession which resulted in rising incomes and living standards. Still, during this accession process countries missed the opportunities to complete the reform process of becoming a fully functioning market economy, to achieve macroeconomic stability and to become a democratic society. All of these factors affected negatively during the “bad” times – since the beginning of the economic crisis.

Having in mind that WB countries belong to a group of countries that have similar characteristics regarding the extent of EU integration, progress with transition, the business environment and the quality of governance, institutional factors are not included in the analysis. The exception is Croatia, which became a member state of the EU in 2013.

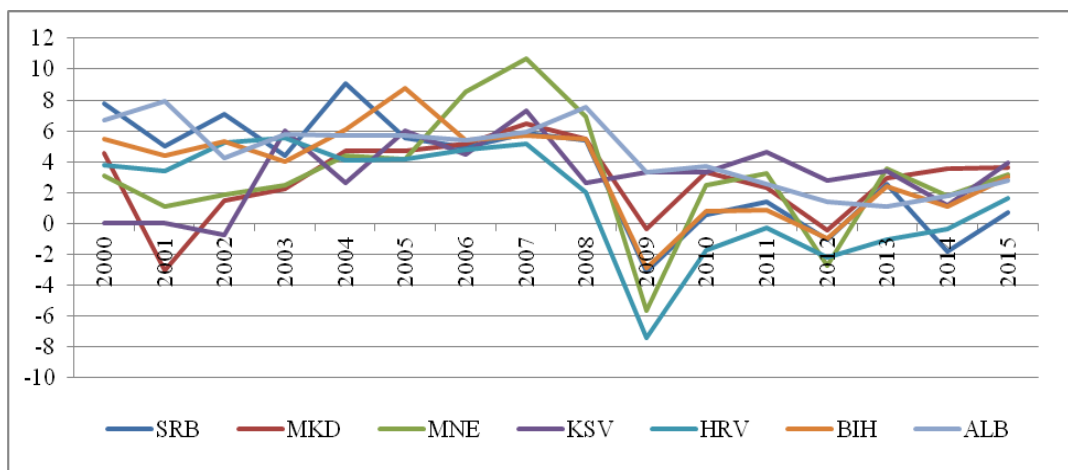
The paper will be presented in three sections. The first section provides an overview of the economic performances of the WB countries i.e. initial conditions at the start of the crisis. Section 2 identifies the variable extent of the transmission mechanisms across WB countries and finally section 3, discusses about the repercussions of the crisis on the region's accession process and prospects. Even though we considered making panel data model for the purpose of this paper, we faced with problem of lack of data for these countries and different data sources that provide incomparable data. Additional problem was that the time series were too short; having in mind that Montenegro became independent country in 2006 and Kosovo became independent in 2008. Until their independence, these countries were part of Serbia, and the data is registered as part of Serbia's indicators.

## **ECONOMIC PERFORMANCES OF THE WESTERN BALKAN COUNTRIES**

The global economic crisis began in the second half of 2007, in the wake of financial and real estate speculation in the United States, which caused mortgage crisis. It came after a long period of international financial instability and trade imbalances. By late 2008, the crisis had spread to many countries all around the world (Japan entered into recession in Q2 2008, Germany Q3 2008, France Q1 2009 and the official recession in the EU was announced in Q2 2008).

The impact of the crisis on the WB countries came in two waves. The first wave was during 2008-2011, as a result of the negative repercussions of the economies in the world, hit by the economic crisis and the second one, by the end of 2011, caused by the Greek sovereign debt crisis and increasing problems in the Euro zone.

However, WB countries during the first eight months of 2008 still had positive rates of economic growth, rise in the FDI and available funds from the financial institutions. For most of the countries in the region, the period during 2003-2007 was characterized by high rates of economic growth: the average GDP growth was 5.38% (figure 1). The biggest problem of these countries in the referred period was the high rate of inflation due to the high prices of the oil and commodities on the world markets (figure 2).



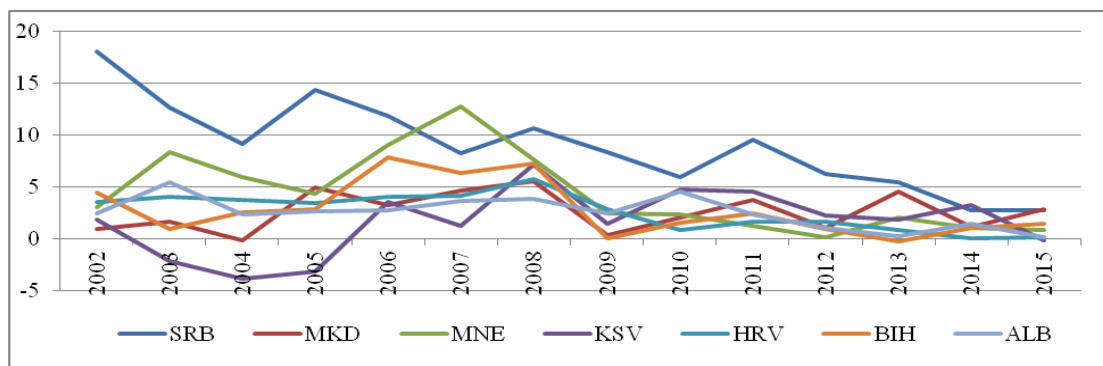
**Figure 1. GDP growth, annual, in percentage (World Bank data development indicators)**

Even though WB countries hoped that they would have mild effect of the negative trends in the world, the situation started to change dramatically in September 2008. After many of the major financial institutions have collapsed and stock prices have slumped, the ongoing turmoil in financial markets brought negative consequences for the real sector and the world entered into recession.

The WB countries were not isolated from the world and the crisis has not completely bypassed the region. The transmission effects, the speed, and the depth of the crisis took hold in various ways, owing in part to the heterogeneity of regional economic structures. Many of the crisis effects arrived through decreases in domestic demand and consumption, as a result of the tightening of available credit in the region, constricting the domestic demand which served as one of the principal factors in regional growth in recent years. Coupled with these shocks of tightened credit markets and decreased consumption, WB countries have been negatively impacted by downturns in many of the productive sectors of their real economies, through slumping trade and investment partners in WB (Shrera, Shahini and Dosti, 2015). The trade openness of the region was generally high at above 50%. This along with downturns in important commodities such as metals has negatively affected industrial production, and export performance has weakened considerably in several sectors. These factors have contributed considerably to the declines in GDP growth experienced by many countries in the region in 2009.

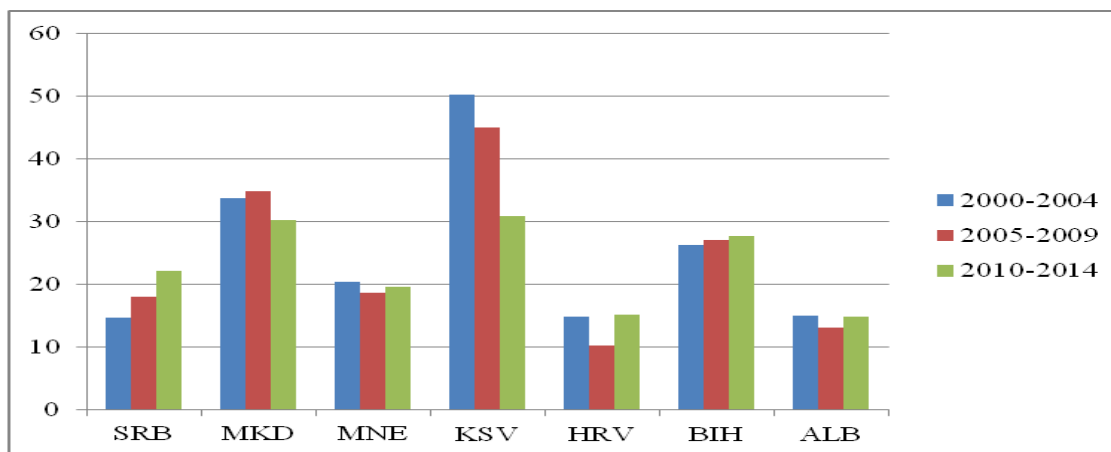
Dramatic change happened around September and October 2008. The annual data show that the growth started to slow down, but remained positive for the whole 2008. By the end of 2009, the rates of economic growth were negative for all of the WB countries, with the highest annual slump of 7.4% for Croatia (figure 1).

The second wave of the crisis was felt during the period 2011-2012, when the problems of the Greek sovereign crisis became evident. For most of the WB countries (Albania, Montenegro and Macedonia), Greece is significant trade partner and one of the key investors. These countries once again registered negative rates of economic growth, even though the fall of the GDP was milder than in the first wave.



**Figure 2. Inflation rate, GDP deflator, annual, in percentage (World Bank development indicators)<sup>1</sup>**

The drop in economic activity had a significant impact on other macroeconomic variables, such as inflation and unemployment. Before the crisis, the inflation was threatening to become a serious problem for almost all of the countries in the region. Figure 2 shows that the rates of inflation were lowering dramatically under the influence of the fall in the domestic demand, steep drop in the oil prices and other natural resources in the second half of 2008. The inflation rates at the end of 2015 were around zero percent. Serbia had difficulty in keeping inflation under control but managed to put under control.



**Figure 3. Unemployment rate, as percentage of total labor force (World Bank development indicators)**

Rates of unemployment in WB were high even before crisis. The highest unemployment rate is registered in Kosovo, Macedonia and BIH (45%, 33% and 20% respectively for the whole period 2000-2014), so the crisis practically had neutral effect. On contrary, Serbia registered 8.3 p.p. increase in 2015, compared with 2008 (figure 3).

<sup>1</sup> Data for 2000 and 2001 are missing because of the extreme inflation rate in Serbia (79% in 2000 and 89% in 2001).

## CHANNELS OF CONTAGION

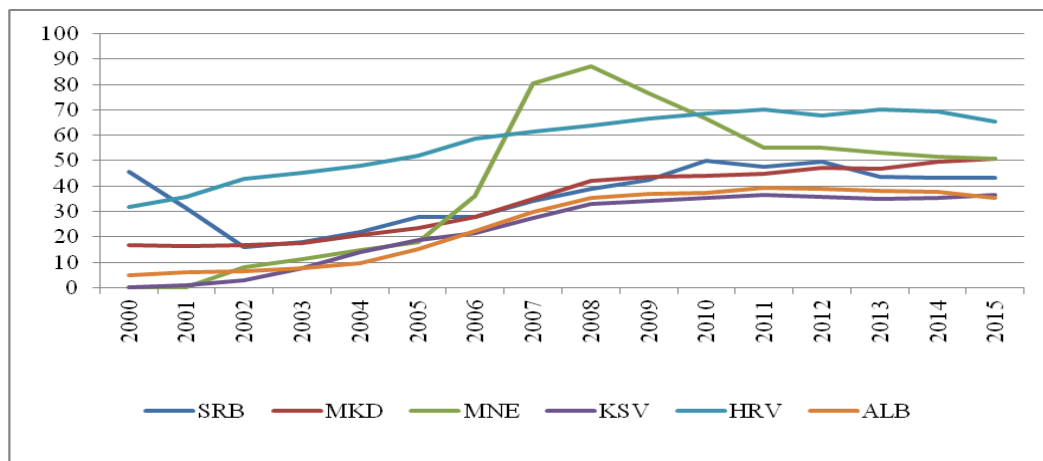
We distinguish four main transmission mechanism of the crisis: export, remittances, foreign direct investments and banking credits to private sector. Since, economic crisis caused retraction in trade with EU, shrinking of private credit; and significant and rapid drop in FDI we first present these three channels as negative externalities from the crisis. Regarding remittances, they showed opposite tendency i.e. stayed on same level or even increased, since the beginning of the crisis.

The fall in the **export** in 2009 was evident in all of the observed countries, with the largest decline in Montenegro of 50.23% and Macedonia of 40.65%, compared with the previous year. Besides the fall in the export in absolute terms, total exports towards the EU in the value of total trade remained almost the same. The percentage remains the same in the years of recovery as well (the EU trade accounts for more than half of the total foreign trade of each country).

The reason is that right after signing of the Stabilization and Association Agreement with the EU, the trade exchange of goods from the WB countries experienced a strong trade diversion effect towards the EU trade partners (Kikerkova 2011, 844-854). That shows that WB countries did not find alternative markets to place their products during the crisis. On the other hand, the intra trade in the CEFTA-2006 is also decreasing, showing low and insufficient trade relations between the WB countries.

Also, intraregional trade is relatively concentrated, with the top six products representing 40% of total imports: mineral fuels, iron and steel, steel products, and aluminium, beverages and electrical machinery and equipment (Handjiski et al. 2010: 8). All of these industries have been particularly hit by the global recession, not only from the fall in demand of these products, but also because of the dramatic fall in price of the metals, especially copper and iron in 2008. In addition, the dispute between Russia and Ukraine in mid-2008 over the gas prices reduced the energy supply in the region that forced the heavy industry in the region to cut production.

Regarding the **financial channel of contagion**, it is important to mention that all of the WB countries experienced credit boom, four or more years before the crisis. Even though countries started with low levels, domestic credit to private sector growth has reached significant growth in the period 2003-2008. The credit amount reached 87% of the GDP in 2009 in Montenegro, and 67% of the GDP of BIH and 64% of the GDP of Croatia (figure 4).



**Figure 4. Domestic credit to private sector, % of GDP (World Bank data development indicators)**

Credit boom was a result of two important factors: first, restructured banking and non-banking financial sectors which were largely placed in the ownership of foreign financial institutions and second, improved access to international capital markets. The foreign banks that largely controlled the banking sectors in the region, and therefore kept the banks on board in the crisis, have been one of the region's biggest concerns. According to the European Bank for Reconstruction and Development (EBRD), in 2007, European banks (mainly Austrian, French, Italian, Dutch, German and Greek) owned 94% of the banking system assets in Albania, 82% in Bulgaria, 86% in Macedonia, 79% in Montenegro, 87% in Romania and 75% in Serbia. The biggest fears was the Greek crisis, since Greek banks had accumulated a significant market share in the region, accounting for around 30% of total banking assets in Macedonia, 25% in Albania, 15% in Serbia by 2007 (Panagiotou 2012).

Even though the funding after 2009 decreased, the foreign banks did not exit the domestic economies and oriented towards domestic crediting. The first reason is that the banking sectors in the region are in relatively good shape (well capitalized and profitable) so, holding on to these portfolios are still attractive for foreign banks. Second, local portfolios are small relatively to the size of foreign parent banks (i.e. selling them will make only a small contribution to the broader deleveraging process). Third, even where asset sales are being contemplated, it is likely to be difficult in this environment for foreign parents to find buyers for their local subsidiaries (Burgess 2012).

**Inflow of FDI** played a very important role in the economic growth achieved in the region during the period 2003-2007. As in other emerging European economies, the peak of the inflow of FDI was achieved year or two before 2009, and then sharply fell. FDI flows to the region decreased by 34 percent between 2008 and 2009, with total flows declining from 12.6 to 8.3 billion dollars. The fall in the FDI was greater in countries that had large FDI inflows in the period before crisis (BIH and Croatia). Even though the FDI started to show positive trends during 2011, the recovery is far behind the pre-crisis levels.

Most of these investments came from Europe, with the Euro area accounting for about 70% of the total stock of inward direct investment in the region. The major investor is Austria (a top investor in all countries except Montenegro). Italy and Greece is present in the Balkans. Overall, by 2010, the Greek companies disinvested almost 1.3 billion Euros from the region, with the biggest withdraw in Serbia and Macedonia (Panagiotou 2012).

**Remittances** are very important source of income and for financing the balance of payments over the years for the region. The flow of remittances declined after 2008 in Albania and BIH, but with slow pace. In the rest of the countries, the value of remittances remained the same or even increase. Most of the remittance flows to Albania come from Greece and Italy, which are also an important source of flows for Macedonia. Germany is a major source of remittance flows to the region, particularly for Croatia, Macedonia, and BIH. Austria is a particularly important source of remittance flows to Serbia.

**Table 1. Foreign direct investments and Remittances, as percentage of GDP (World bank development indicators)**

	Remittance			FDI		
	2000-2004	2005-2009	2010-2015	2000-2004	2005-2009	2010-2015
SRB		5.489316	8.990085	3.212223	9.199472	5.565222
MKD	2.803882	3.96022	3.676651	5.822324	5.256678	3.118435
MNE		3.852987	8.570248	3.881578	25.95823	14.01468
KSV	17.05509	18.73325	16.47291	1.464027	8.357014	5.700927
HRV	3.871561	3.132551	3.679277	4.201407	6.110441	2.689416
BIH	23.70883	15.63913	10.85671	4.435417	5.971049	2.29287
ALB	16.31043	13.43945	8.856958	3.969923	6.7427	8.657303

Table 1 makes comparison between the flow of remittances and the FDIs (as percentage of GDP) in the period 2000-2015. The value of remittances has considerably exceeded the volume of FDI in BIH, Kosovo and Serbia. Only in Montenegro the FDI are more significant source of finance than remittances. The annual flow of remittances reached around 10 percent of GDP for Albania, BIH, Montenegro and Serbia, and above 15% in Kosovo. Even though, the remittances are considered as source of risk because of their instability and unpredictability, higher percentage of remittances in most of the WB countries helped in sustaining the balance in the current account and domestic demand. What is maybe more important is that inflow of remittances alleviate the social pressure in the countries.



## **THE IMPACT OF THE EUROPEAN CRISIS ON THE WESTERN BALKAN EU PROSPECTS**

In the previous section we point to the fact that economies of the WB countries are very dependent and highly vulnerable from the economic situation in the EU. The regions problems are not only economical. There are political failures as well. There is indeed a silent pact between enlargement fatigued EU member states and rent-seeking elites in the WB who don't mind slowing the pace of transformation. It seems that countries does not know or want to sort their own problems, and are waiting for a solution from external actors. According to authors Bartlett and Prica, 2011 the benefits of EU accession are higher than the costs for EU accession, for most of the WB countries. Therefore a strategy of non-accession would most likely only be chosen by ruling elites which have much to lose from adopting EU rules.

But, accepting the situation in the WB is also a failure for the EU. If the EU cannot deliver transformation in the WB – a region that many see as its backyard – how it can expect other global players to see it as a credible actor in the Middle East, the post-Soviet space or East Asia? Putting enlargement on hold allows other actors to seize on business opportunities, score political points and carve out niches of influence – in part, free riding on the tremendous investment into stability already made by the EU. The United States still plays a decisive part in Kosovo and often has greater leverage over the government there than the EU. But ambitious powers such as Russia, Turkey and China are also beginning to fill the gaps (Bechev 2012).

Turkey for example is among the top three foreign investors in Croatia and Serbia and among the top five in Bosnia. The Serbian government is courting new loans from Russia and Asia as it needs to service its debt in 2012. A new bridge over the Danube in Belgrade and 140 km of highways in Serbia are being built by Chinese companies. Such diversification of investment partnerships, now common across the region, reflects larger shifts in the global economy.

Here comes the dilemma of whether EU is still an engine for convergence between Europe and its peripheries? After the Greek crisis and experiences with enlargements towards Central Eastern European countries, EU member states are more uncertain to embrace the economically weaker countries. Even though the accession of the WB countries is an official regional policy of the EU, the "wait-and-see" approach has been pursued for too long, causing loss of EU credibility in the region. It seems that the EU integration is a double-edged sword for the WB: in good times, the European core exported its prosperity towards its South-Eastern region; but now, at a time of crisis, it is exporting instability.

According to the official statements of president of the European Commission (Junker 2014), ongoing negotiations will continue, and notably the WB will need to keep a European perspective, but no further enlargement will take place over the next five years. Still, the question about future enlargement was not put aside. Besides Croatia accession in 2013, the rest of the countries experienced some kind of improvement in the accession towards EU. In June 2014, Albania was granted EU candidate status. The accession negotiations with Montenegro were opened on 29 June 2012, and the progress has been made so far. On 21 January 2014, the 1st Intergovernmental Conference took place, signaling the formal start of Serbia's accession negotiations.

The decision of the European Council to open negotiations was reached due to Serbia's progress in the reforms and its continued commitment to the normalization of its relations with Kosovo. Stabilization and Association Agreement (SAA) between the EU and Kosovo entered into force on April 2016. BiH, signed the SAA in 2008 and in June, 2015 the agreement entered into force. It seems that Macedonia had the lowest progress towards accession. The European Council granted the status of candidate country in December 2005, but dispute with Greece over Macedonia's name continues to hamper the country's bids to join the EU and NATO.

The accession of Croatia into the EU is a big test of the benefits for the WB. It is expected that the EU accession will bring higher FDIs to Croatia, create more growth and jobs. With good strategy and alliances inside the EU, Croatia can help and foster the enlargement towards the rest of the countries in the WB. It is in Croatia's interests to help its neighbors (among them its former enemies) to join the EU as soon as possible, but Croatia could also misuse its seat behind the EU table to score political points, reinforcing new divisions in the region and free riding on the huge credit and political investment behind its own EU membership (Nic 2013).

Still, the EU has its own instrument to restore the confidence of the accession process. The diplomatic initiative "The Berlin Process" is linked to the future enlargement of the WB towards the EU. This initiative aims at "converting" political commitment into further action, by using the best practices and international norms and mechanisms.

For the pre-accession countries the Instrument for Pre-accession Assistance (IPA) remains to be the key accelerator of reforms and a EU's central policy instrument which is directly connected to economic development. Similar to Structural and Cohesion funds, the IPA is designed to mirror closely structural cohesion and rural development funds of the Commission in preparation for management of such funds upon accession. These pre-accession funds covering the period 2007-2013 (IPA I) and 2014-2020 (IPA II) are a sound investment in the future of the WB countries. However, it is still a challenge for the EU is finalizing the procurement of IPA I funds, setting medium and long term priorities that would accelerate the usage of the fund and sufficient and trained personnel in order to ensure sound financial management of the EU funds and greater visibility of the possibilities transmitted to the beneficiaries.

## **CONCLUSION**

The countries experienced common external shock from the world economic crisis, but the impact of the crisis had varied across countries. In the first half of 2000s the economic growth of the countries was export and credit-driven. As the inflows began to decrease, the problems arise. Some countries, such as Albania have proven quite resilient to the weakening of international capital flows and reduction in export demand, while others, including Croatia and Montenegro have been harder hit. In very broad terms, the countries that were more open, more integrated with the European economy, tended to suffer the biggest loss in output following the crisis.

The general conclusions of this paper are: a) The fall in the FDI was greater in countries that had large FDI inflows in the period before the crisis; b) The remittances seemed to be resilient to the negative effect of the economic crisis and they helped to most of the WB countries to sustain the balance in the current account and domestic demand; c)


The countries experienced large reduction of the export performance, but the relative percentage of the total export towards EU remain the same, showing that countries did not find alternative markets to place their goods and services during the crisis; d) The credit growth affected negatively the economic performance in the WB countries. The reason is that the allocation of the assets before the crisis was in many cases biased towards consumption rather than productive or investment activities.

The countries from the region substantially depend on the EU trade and finance, and therefore indirectly they will start to gain as the Union will start to recover. Four member states play a particularly prominent role in trade: Germany, Italy, Austria and Greece. The EU's share will increase because Croatia is the third-most significant partner for the remainder of the Balkans.

Still, the EU does not have the capacity to continue to be an engine for convergence between Europe and WB. Even though the accession of the WB countries is an official regional policy of the EU, the "wait-and-see" approach has been pursued for too long, causing loss of EU credibility in the region. Putting enlargement on hold allows other actors to seize on business opportunities, score political points and carve out niches of influence, reflecting shifts in the global economy. There are two situation of unfolding the crisis in the Euro zone, and both are unfavorable for the region. First, if the Euro zones solve its problems, it might take a while until the new enlargements are on agenda, giving priority to economic stability and growth. Second, if it doesn't solve the problems, EU disintegration might happen. In both cases the WB countries will have negative repercussions on their economies and will lose the external support for their modernization and democratic consolidation.

On the other hand, the WB does not have other options. Balkan citizens are not in love with the EU, rather, they see it as something inevitable. For all practical intents and purposes, the Balkans is already part of the EU. Since the 2007 accession of Bulgaria and Romania, the region is now encircled by the EU. Croatia's membership shrinks the geographical perimeter even further. Trade and financial liberalization between the EU and the region (as we previously explained) are already established.

Therefore, the EU needs to deploy its existent resources, as scarce as they may be, to bolster growth, competitiveness and employment. Instead of the question of the disaggregation of the Union, the question of the restructuring of the principles and means of the EU it is more important. EU should develop a more flexible and creative sets of instruments, such as making the IPA II more inclusive process and bringing closer to the citizens, utilizing all important assets of WB societies towards integration into the Union and strengthening the political will of the countries for implementing the necessary reforms and effective use of the granted funds.

The future outlook for the WB countries is that they must pursue further integration in the Union. In economical sense it would mean that the counties will take advantage of a future global upturn even though it is not expected that the rates of economic growth will be high as few years before the crisis. On political aspect, they will avoid pessimistic scenarios for the region. Otherwise, if the European perspective is lost, it is more likely that the region will be under the pressure of ethnic nationalism, which can cause tensions and jeopardize the political and economic stability of the region. 

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Abstracting

## THE AMBUSH OF AFRICAN PHILOSOPHY: AN EXHUMATION OF CLASSICAL LIBERAL PRINCIPLES IN THE EVOLUTION OF AFRICA SOCIETIES

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### *Abstract*

*The persistent resentment towards classical liberal principles especially individualism and free market in contemporary Africa, represents an outcome of decades of ambush against the ideology despite its clear connections with traditional African philosophy and relevance to the prosperity of modern African states. This work attempts to draw comparisons between social and economic organisation in traditional Africa and classical liberal principles. Contrary to literatures that portray the community as the real and only end in traditional African societies, elements like free trade; market economy; consensus; anarchy and limited governance negates this position. While tracing the cause of Africa's cling to socialism and communism, this paper presents an ideological transition from pre-colonialism to nationalist and post-independent Africa. It concludes by demystifying the arguments of individualism as antithetical to African morality. It also justified the inevitability of classical liberal principles in modern Africa.*

*Key words: Classical Liberalism; African Humanism; Ubuntu; Individualism; African Morality; Free Market*

## INTRODUCTION

There is rarely a fiercely contested ideology in Africa as classical liberalism – often relegated to capitalism. The annihilation of the African academia by radical-socialists and Marxian philosophers since the 20th century greatly influenced the presentation of the origins of African life as purely socialist. Whereas, later inquiries revealed philosophical patterns that correlates with classical liberalism and other ideas. They also debunked the universality of communalism and social welfarism in traditional Africa. Although, the social and economic structures in some traditional African communities were communally designed, only because communalism was seen as the formal and best means for societal organization based on factors like population, kinship, and tribal solidarity. On a broader

spectrum, qualities like respect for individual happiness, personal interest and dignity were equally permitted. And in numerous communities as would be later revealed, organization and conduct were not dictated or divinely commanded but humanistic and utilitarian with overarching emphases on improving social functioning and human flourishing (Gyekye 1995).

Philosophers - mostly of the African traditionalist school- and scholars turned politicians like Julius Nyerere (Tanzania), Kwame Nkrumah (Ghana) and Jomo Kenyatta (Kenya) through their writings and patterns of governance, glued Africa's history to social-communism. Of course, this was at a period when literatures on African philosophy were scanty and public knowledge of the market system and governance were low. This knowledge void filled by the traditionalists has endured in the African academia for decades with a solid effect on public knowledge. The platform of leadership and scholarship made the ideological inclination quite easy for the traditionalists. Hence, the sustained view of philosophy as an embodiment of opinions best presented by the ruling class and a mere exhumation of Africa's past and rehabilitation of culture (Kasanda 2015, 30-32).

### **WERE TRADITIONALISTS RIGHT ABOUT AFRICA'S SOCIAL-COMMUNIST FOUNDATIONS?**

Well, the absence of technically organized ideologies in traditional African societies made several historians resolved that pre-colonial Africa had no clear patterns that governed behavior except the unearthing of some ancestral practices. Writers like George Dalton identified the inability of Western economists to draw clear parallels between economic systems in traditional African societies to theories developed in the West as primary course to this conclusion (Dalton 1997, 27). Unlike Europe or the Americas where sufficient texts written by generations of historians exists on the cultural and philosophical evolution of the society, it rarely does in Africa.

Most knowledge on the evolution of African philosophy is preserved in arts, tales and other literatures passed from one generation to another. Other evidences especially in archaeological folds rarely exist to corroborate some of the narratives. The colonial masters stole many, some were destroyed during wars and the surviving few gradually vanished due to lack of preservation by successive generations. Meanwhile, empirical inquiry into African philosophy never surfaced until around mid-1900s, most notably when catholic Father Placide Tempel published his *La Philosophie Bantu* (The Philosophy of the Bantu) in 1945 as a response to the misconceptions about the Bantu people of West Africa. Tempel's book set the premise for subsequent studies in African philosophy. He refuted the claims by Western writers and the Catholic Church that traditional Africans had no rational thinking that regulated affairs but led a common primitive life. And similar to Tempel, writers like Alexis Kagame attempted to create the substance for African philosophy by answering meta-philosophical questions -an attempt to create the philosophy of African philosophy- for ease of study due to absence of literatures.

Continued investigations by African writers later revealed that the absence of ideological details noted by Dalton and others actually existed in African communities but can only be studied with cognizance to social structures such as religion and kinship (Ayittey 1991). Similarly, nationalist intellectuals observed that there were indeed patterns

peculiar to each African community resembling some of the propositions later developed in socialism and communism (Khoza 1994). They historically presented the collective purpose against individual purpose by arguing the true and only philosophy in traditional Africa was the philosophy of brotherhood and welfarism, which prevented anyone from getting prosperous than everyone. They practically rejected all notions of self-determinism or personal ambition as non-existence in traditional Africa. They also claimed a strongman leadership of interest as the choice of governance in these communities.

In their accounts, the supreme leader or council held the right over the life of every member of the community and served as the judges of morality. Contrariwise, the philosophy of traditional Africa was not in any way relegated to principles in socialism or communism, but greatly extended to principles advocated in classical liberalism as would be seen later.

In African antiquity, the social-communist setting was not a general obtainable across all communities as claimed by the traditionalists. In some groups, authority was not central, while in others, they never existed. Members were entitled to self-determinism, as many of these communities were either stateless or acephalous. Some had well-organized administrative structures without monarchs or a centralized ruling elite council. In communities such as the *Tallensi* (Ghana), *Logoli* (Kenya) and *Nuer* (South Sudan) there were no institutions that regulated social life but they were purely anarchic (Evans 1940, 5). In communities with clearly defined systems of governance, majority of them had structures for institutional ombudsman and separation of powers among governing councils – comparable to the tripartite system proposed by French philosopher, Baron de Montesquieu in *The Spirit of the Laws* (1748). These communities also treasured standards for checks and balances to avoid power concentration or abuse by an individual or group. For example, in the *Igbo* community (Nigeria), authority was shared among groups like the *ofe* (family heads), *ozo* (nobles) and the age grade groups with similar model among the *Yoruba* (Nigeria), the *Bété*, *Dida* and *Baoulé* (Cote d'Ivoire), the *Nuer* and *Dinka Gnoc* (South Sudan), the *Massai* (Kenya), the *Nyjakusa* (Tanzania) and *Tonga* (Zambia) tribes (Sesay 2014). Political decisions rested on the harmony of opinions among council members while individuals typically determined economic decisions. However, the absence of centralised structures of authority did not implied statelessness so to speak because there were customs and understandings that sanctioned deviant behaviors.

Even in communities with centralized authorities, independent institutions limited governance, contrary to claims of a common authoritarian pattern all over. In the political fold, governance only existed to whatever extent public opinion agreed. Most political decisions greatly depended on consensus among chiefs, councils, or the public as it were, with cognizance to individual judgment. This individual judgment was present in form of household representative democracy. Every member of the community belonged to a household, and their opinions formed household interests, which was subsequently represented in councils by their elders or nobles. Societies such as the *Ashanti* (Ghana) and the *Yoruba* (Nigeria) emphasized individual interests through the household, with significant checks on monopolization of interest by their chiefs. And this was common to most communities. Former Zambian and Tanzanian leaders, Kenneth Kaunda and Julius Nyerere resolved to this fact:

Kaunda: In our original (African) societies, we operated by **consensus**. An issue was talked out in solemn conclave until such time as agreement could

be achieved. Nyerere: In African society, the traditional method of conducting affairs is by **free discussion**. The elders sit under the big trees, and talk until they agree (Wiredu 2004).

Clear enough, traditional Africans were resentful towards fortification of an individual to act as sole representative of choice and interest even if the individual was a representative of the gods.

The misrepresentation of the political organization in traditional Africa as akin to social-communism as opined by most traditionalists and nationalists could be attributed to the twisted interpretation of the African virtue of *Ubuntu*: an ideology that depicts African humanism. *Ubuntu* (Zulu/Xhosa) or *uMunthu* (Chewa) is the bedrock of sound human relations in traditional Africa: the collective unconscious of intra-human relations and the essence of morality (Khoza 1994). It was so to speak, the foundation of African morality (Pauw 1996). *Ubuntu*, on the complex fold reflects the African understanding of humanism; dignity; respect and proper conduct. Augustine Musopole, a Malawian theologian saw *uMunthu* as the total human integrity and crucial to cosmic inter-relatedness, harmony and salvation with strong communal dimension (Musopole 1993). Its modern usage is more entrenched in movements like pan-Africanism, Negritude and Black Power, which influenced nationalist struggles for independence (Khoza 1994). Radical nationalist leaders build the interpretation of *Ubuntu* on African socialism –socialism rooted in African culture and values- and to them, it was the ideological foundation in post-colonial Africa. They observed that African life had always been community centered without relevance to personal interest – a bias and opaquely generalized notion as proved in this work. Most of the participants in the 1945 Manchester Conference including Léopold Senghor (Senegal), Kwame Nkrumah (Ghana), Sékou Touré (Guinea), Tom Mboya (Kenya), Wallace Johnson (Sierra Leone) and others, especially Julius Nyerere with *Ujamaa* in Tanzania, vehemently encouraged and practiced socialism in their respective states. Likewise in countries that fought colonialism through liberation wars like, Guinea Bissau, Mozambique and Angola.

In Tanzania for instance, *Ujamaa* was launched in 1967 to regenerate traditions and values similar to pre-colonial Tanzanian societies in a bid to institute a new welfare state void of enterprise or individual interest but with national and collective prosperity as its end. Most of the social arrangements and resurrected cultures struggled to fit in modern Tanzania.

As expected, the system largely failed in both social and economic ramifications. It further impoverished the people and laid foundation for an economically problematic state. Guinea under Sékou Touré experimented with similar variant of African socialism and left a brutal political landscape with an acutely bizarre economy. In places where post-independence leaders verbally advocated for capitalist economy like in Zaïre (under Mobutu Seko), Cameroun (Ahmadou Ahidjo), Togo (Gnassingbé Eyadema), and Gabon (Ali Bongo), cronyism; greed; corruption and obsession for power never allowed for institutionalization of a *free market* capitalism. And these states were practically no different from the former. Meanwhile, understanding the dimensions of African nationalist struggle is a prerequisite to uncovering why socialism and communism took root in Africa.

The fight for independence in Africa centered on two things: to rid Africa of Western imperialism (by all possible means including war), and to develop the economy and cure poverty through radical socialist reforms. Of course, this was at the height of



communism in places like Cuba and the Soviet Union. With the obvious resentment towards the imperialist West, it was better affiliating with the communist East to firstly, ensure their stay in power and secondly, to institutionalize a system for effective wealth redistribution. It eventually made African nationalists grew heavily attached to the communist bloc. They collaborated in adopting economic and social structures of the communist states that would later prove disastrous to nation building in post-independence Africa. They got financial and personnel assistance; socialist principles guided public conduct in replica states; socialism as an ideology got tremendous academic appeal and the new Africa looked more like a glorified communist workshop. This hitherto solidified Africa's ideological apology towards socialist and communist principles.

In tracing the reasons for this easy radicalization, the massive exploitation of Africa under colonialism (starting from the 1870s) was in fact a primary factor. The fattening and industrialization of Europe on the back of Africa's human and natural resources offered capitalism a 'theft' and an imperialist ideology intended to further subject Africa to continuous economic exploitation. This unfortunately coincided with a time when capitalism received immense glory for Western industrialization with Africa beneath the shaft. Logically, any idea that had been responsible for Europe's prosperity other than capitalism would have certainly been an enemy of Africa. Moreover, nearly all political figures in Africa vocally repelled Europe and anything Western during this period. Frequent rants and campaigns against capitalism often made the public appealed to the socialist agenda of politicians and their liberation charisma. Zimbabwean president, Robert Mugabe echoed this resentment in his common nature while observing:

Capitalism did not only plunder our land and other natural resources, thus impoverishing our peasants and making vast communities landless, it also turned a substantial percentage of the population into a poor wage-worker class... The difference between Socialism and Capitalism is, therefore, the difference between equality and inequality, between equity and inequity, between justice and injustice (Fisher, 1978: 206).

It was that bad. These reservations made independent struggles took anti-white racialist and tribal separatist dimensions while most nationalists experienced first-hand, the disparity in development between Europe and Africa as students in the West. Their return nonetheless, strengthened socialist resistance against continued Western capitalist exploitation. It peaked in the early-mid 1900s and majority of Africa subsequently gained independence on the back of social-communist development agenda.

Almost immediately after independence, economies improved with export gains reaching all-time highs with states revenue matured heavily towards the 1970s and 1980s. The joy was however short-lived. Economies like Nigeria, Angola, Rwanda, and Liberia slipped due to negative outcomes in socialist and colonialist arrangements. The promotion of a strong central authority by African socialism permitted politicians to massively loot an overwhelming percentage of wealth created during Africa's economic boom. Corruption, powerful state, public restrictions and suspension of civil liberties were final bullets to the definite failure of the planned state across independent Africa. And the military utilized the familiar one-man dictatorship established under civilian rule to seize power with far worse damages on social, political and economic settings. Factors like the shift of interest among public workers, the irresistible rise of private corporations, the spontaneous reaction in

markets and the increase in individual choices over state despotism caught the ‘central state’ planners off-guard. As a result, the 1980s and 1990s witnessed the juggling of economic reforms that created distortions in nearly every fold. Infamous of them was the Structural Adjustment Programmes (SAPs) of the Bretton Woods institutions. Hence, finding Africa’s lost glory in socialist and communist drawings never helped Africa, rather, it effectively created the foundations for a sustained problematic statism contemporaries are vigorously battling.

## **THE PLACE OF INDIVIDUALISM IN AFRICAN MORALITY**

There is no denial of the fact that most traditional Africans valued the prosperity of every member of the community with preference on working in unity towards a common goal. There was however, an equal respect and permission for individual choices and interests. Traditional Africans worked on their farms to provide food for themselves and their families with the secondary intent of producing for exchange. There was rarely a case of everyone working on a community farm to produce food for everyone by equal sharing. Africans valued the non-universality of an individual’s abilities or needs, but permitted for charity and fairness in enterprise to ensure a relatively balanced society.

The individual in African philosophy mostly existed as a reflection of his community. He was seen as a product of his tribe less than he was an independent being. His birth and death were to satisfy the wishes of the gods on earth. Like many tribes in Africa, several cultures according to history put the individual as a unique creation with the purpose of happiness and self-realization. In traditional Africa, it was best that the individual remained a social being. This view of man as a societal element primarily applied to his identification as a member of a united community in pursuit of collective prosperity with regards for his individual happiness. However, the expansion of groups during territorial wars and migration, increased community populations while conflict of interests among groups and individuals led to the gradual disassociation from the usual collective interest.

Hence, the idea of the individual as a communal element decreased as societies became bigger. For example, during the hunting and gathering era when community populations were very small, it was easy to commit everyone to a unified goal even as few members harbored personal interests. However, as people integrated and population augmented, the individual began to isolate itself because of the geometric increase in interests of new members against the collective. In some cases, people left their villages in pursuit of personal goals. Even, members of ruling families deserted their clans due to conflict of interest with their kin only to establish new territories later, and the conflict of interest continued to repeat itself prompting the definite decrease of collectivism.

Although, some African societies like the *Xhosa* and the *Zulu* emphasized the ideals of mutuality and community before the individual, there still existed self-interest. Classical liberals argued for a system that observes the society in light of its distinct members, for a society has no existence beyond the individuals that comprises it, while it is in itself a composition of different interests (Butler 2013).

And the socio-economic consciousness of the society is the summary of individual consciousness. Friedrich Hayek puts it clear when he explained that the “associations within civil society exists for specific end while the civil society has no purpose; it is the

undersigned, spontaneous emerging result of all those purposive associations” (Hayek 1988). Despite this similarity in purpose, contentions still exist between the two folds on grounds of economic and social morality among Africans.

On the economic fold, classical liberals outrightly argued for a *free market* economy chiefly run by individual choices and price, and this was a position common in most economies in traditional Africa. Markets were open and less regulated. In centralized communities such as the *Buganda* (Uganda), *Hausa/Fulani* (Nigeria) *Akan* (Ghana) and the *Zulu* (South Africa), there were large and open markets such that it attracted participation from communities hundreds of miles away. Trade ensued among communities in their specialized industries with limited or no restrictions, and one can safely deduce that elements of David Ricardo’s *Comparative Advantage Theory* – a cardinal in classical liberalism - existed in these communities even before it was theoretically developed in Europe.

One similar end to both African humanism and classical liberalism is in their emphasis on peace, progress and respect for human dignity through moral justifications. Though, the interpretation of these morals and their justifications is what differs. In traditional Africa, morality was whatever standard the community agreed to guide general conduct. To classical liberals, it is the respect for individual interests and choices, and both existed as the holding force for societal consciousness. In the former, values inherited through generations like equity and justice ensured a fair use of power and obedience to law to avoid conflicts among members and communities. Similarly, in the later, writers like Ludwig von Mises, Adam Smith and Jean-Baptiste Say, stressed the anti-imperialist and anti-warfare stance of classical liberalism. They saw economic liberty of communities in a fair market system as a way to avoid wars and foster peace. In other words, traditional Africans percept morality as only attainable through inherited values, while classical liberals saw it in form of the peaceful decisions of individuals.

Another misconception is the purported rejection of the principle of cooperation by classical liberals, which is in fact emphasized in their advocacy. The critics argued that market competition will eventually lead to unfair distribution of wealth and that African states were not ready for such experiment. Conversely, classical liberals saw cooperation as important as competition is to the economy. American libertarian writer David Boaz explained that both “cooperation and competition are essential elements of the simple system of natural liberty, and most humans cooperate with one another than they do competing” (Boaz 2015). In reality, cooperation is bound to ensue in a *free-market* economy because individuals cannot provide all their needs themselves and they must interact with others that can provide them in a mutually fair exchange. Then, the cycle goes round to build a system dependent on fair cooperation. Education, transportation, technology, entertainment and especially food are variables too complex in contemporary societies for an individual to produce. That an individual needs these to survive makes cooperation inevitable.

Besides, cooperation gets people their desires the way they please because, production and consumption capacities vary among individuals and it remains best when people determine these themselves. It is much safer than to have people equally providing the general need irrespective of their interests or sharing them equally regardless of their needs. Such scenario has invoked destructive economic bubbles in many African states.

The first generation writers on African philosophy falsely interpreted goodwill and solidarity to be state welfarism and collectivism. Even present writers usually claim capitalism has bitterly failed in Africa due to its emphasis on 'self-interest'. An average African still see the placement of self-interest above the collective as antithetical to African morality and it will ultimately monopolize dividends of the economy to a privileged few, whereas, it is the exact opposite. In a society where people serve the interest of others at the detriment of theirs, such society rests on an economic thread because there are always a group that would not believe in serving others due to ambition or greed. This group will get exceedingly rich while others are busy working in their favor, and those that remained devoted the common-good will eventually get exploited and poor. On the long run, the poor group will likely react to such imbalance with a potential of instigating an economic disaster. This scenario would not occur in a lawful and competitive system where everyone was self-interested because, value and profit is a win-win of a *free market* economy. To be self-interested is not to be greedy or exploitative; it is fairly pursuing one's desires for a betterment of life. Moreover, the individual best answer the question of his self-interest.

Equally, many African academics remain wrong in their notion that contemporary African states practice capitalist systems copied from Western economies (Akpan 2004; Obot 2004; Abiodun 2015). The first lapse is that the so-called African capitalist economies are in fact social-welfarist states with policies that negate the *free market* economy of true capitalism. Their economic systems are acutely crony. A cabal of wealthy men dominates key industries with state legislations protecting them. Such legislations usually include the imposition of high tariffs on industrial supplies to hold back emerging firms in specific industries. They also raise taxes on small businesses with many of their cronies often guilty of tax evasion. They enact stringent policies to limit the registration of new firms and restrict foreign investment in these industries, all in the quest of protecting the interest of the wealthy few. In return, the cabal either heavily finances their political quests or act as their economic joker. These acts are common in the energy, petroleum, transportation and mining sectors of majority modern African states and outrightly negate anything true capitalism stands for. Unbiased rankings and reports on economic policies of these African states continues to reveal series of economic patterns correlative to crony capitalism.

In a *free market* economy on the other hand, policies that favors one group at the detriment of others would rarely exist, because true capitalism means giving everyone equal opportunity at individual pace without chauvinism or protectionism. Every individual would have equal access to market; tax rates on small businesses are relatively low and entrepreneurs can access foreign markets for exchange of materials and finished products. It is a complete opposite of a government controlled socialist system or a crony capitalist arrangement. Countries like of Coted'Ivoire, Mauritius and Mozambique are presently experiencing massive economic growth due to commendable efforts towards a *free market* economy.

On social morality, a peculiar quality of the African life is the zeal to preserve culture and traditions even when in conflict with individual interest. As noted earlier, there was no unified lifestyle in traditional Africa except the common exhumation of culture and ancestral practices. In some communities, the ruling elites determined what was socially morally and what was not. In others, individuals had liberty to lead their desired life insofar it respects the liberty of others. However, as generations, evolved, foreign influence penetrated the rigid cultures and newly inherited lifestyles influenced social moral

standards. For example, practices like monarchy; forbidden of estate; genital mutilation; facial and body markings; execution of homosexuals and twins among others used to be culturally moral and formed the nucleus of social existence. But the effects of cultural interactions as communities expanded with time persistently redefined socially moral behaviors. This is reflective in irregular changes in value and culture of modern African societies. Positions such as predetermined behavioral responsibility and blind adherence to authority ranked high decades ago, but revolts against authoritarianism, tyranny or subjective cultures in recent years corroborates this declination. Sorry enough, many traditionalists still see classical liberal principles as rather anarchist even as some African communities flourished under anarchy. Or adversative to traditional African principles: a sort of threat to Africa's historical identity. Unlike the total anarchy assumption, classical liberals proposed an impartial system of justice in the custody of the state, but in trust, with some monopoly of force (if needed) to guarantee relative balance (Butler 2013). This was the exact structure in most of traditional Africa. Leaders and governing councils were guardians of values and preserved the justice system through impartial adherence to laws while public revolt was an option against tyranny. Like many other race in human history, traditional Africans despised tyranny. The central authority only existed as representative of the gods on earth, to guide the living in the right conducts only. And as Otto Lehto explained, "in addition to being a doctrine of maximizing free and voluntary human cooperation, classical liberalism is a doctrine of legal limits to coercive actions" (Lehto 2015). In African tradition, the individual was as important as life itself, and the respect for his dignity, a virtue. The only difference was that they saw the realization of individual prosperity as more realistic when embedded in the prosperity of his community. Even Kenneth Kaunda, a staunch African humanist agreed when he said:


I am deeply concerned that this high valuation of Man and **respect for human dignity**, which is a legacy of our [African] tradition should not be lost in the new Africa. However "modern" and "advanced" in a Western sense the new nations of Africa may become, we are fiercely determined that this humanism will not be obscured. African society has always been **Man-centered**. We intend that it will remain so (Eze 1997, 42).

His submission serves well an historical correction for contemporaries.

## CONCLUSION

That traditional Africa prioritized the community over selfishness is not a contestable fact, but that the community was its real and only end is where the contention lies. The correlation of most African values like free trade and market economy on the one hand, constitutionally limited governance and consensus on the other hand, contradicts pre-existing notions of a unified socialist or communist philosophy in traditional Africa.

Nevertheless, the falsification of classical liberal principles as the sole responsible factor for Africa's present socio-economic predicaments is false. Africa's woes are solely due to political greediness and distortions from continued experiments with socialist ideals.

We can fairly conclude that the negative influence of colonialism was in fact a cementing factor for the sporadic inclination of Africa in anti-capitalist sentiments and not because Africans were not naturally capitalists or that capitalist principles never existed in traditional Africa as presented by most philosophers. Therefore, there exists an undisputable correlation between classical liberalism and traditional African philosophy. 

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Abstracting

## SECULARIST AND ISLAMIST CONSTITUTIONAL AND POLITICAL CONCEPTIONS IN THE MODERN MUSLIM WORLD: THE CASES OF KEMALIST TURKEY AND KHOMEINI'S IRAN

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### *Abstract*

*Modern constitutional and political concepts, in a broad sense, represent an expressed codification of the elements of value that structure the relevant society or the particular group that tries to project or channel them through the existing order. The secularism vs. Islamism dichotomy is a part of such a conceptual framework. The author elaborates and compares both ultimate constitutional and political designs, specifying them through the example of Turkey and Iran, as well as to shows the basic characteristics through the prism of their political legitimacy, the organization of power, the human rights and freedoms, as well as the possibility of political activism. The thesis that the author notes develops in the direction of a warning that the extremes contained in the constitutional provisions in the vividly ideologically divided societies can be a source of a conflict and/or can generate instability or suffocation of the pluralism in the political arena.*

*Key words: Secularism; Islamism; Velajet-i-Faqih; Kemalism; Atli ok; Constitutional-political design*

## INTRODUCTION

The phenomenon of the secularism-Islamism dichotomy in the modern constitutional design of the contemporary Muslim societies became characteristic especially after the Islamic Revolution in Iran in 1979 and conceived after the victory of the Kemalists in Turkey in 1924. This paper is but a general conceptual illustration aimed at determining several key respects. Firstly, what constitutes the core of the secular and the Islamist constitutional postulate and what are its visible features? Secondly, what are the essential differences in the access to political and societal value components, manifested through the prism of the organization of power, human rights and freedoms and the

possibility of a political action? Lastly, yet not less ephemeral, the paper illustrates the historical genesis of the occurrence of the respective constitutional and political groups, and, thus would assume the trajectory of their impact on the social life.

The political system gains its primary social category codification through the primacy of the constitutional design. Thereto, its essential determinant is its stabilization and valorization of the political value elements of the mainsail of the social fabric or a particular group. The latter domain depends largely on his consistent output. Heywood is absolutely right when he notes that although the idea of constitutionalism is closely associated with liberal tendencies, there is nothing that would prevent the undemocratic character of the constitution (Hejvud 2004, 542). Thus, if the constitutional conception is undemocratic, it ejects certain subjects in the affirmative or subordinate role, and we cannot talk about a democratic political system.

This statement aims to reconfirm our next question: Are there, actually, in the constitutional political design of Turkey and Iran, provisions that affirm some at the expense of other political parties, and what generation gets through the political discourse? Can the other thesis, the one of Fareed Zakaria strengthen the “illiberal democracy” (Zakaria 1997, 27) to be plausible in our case? Can we identify a system that would be basically democratic and not open-plural, and to what extent can such a system be modeled? To which extent the existing constitutional and political systems of Turkey and Iran are willing to be open to individuals with different political and ideological platforms of the established official doctrine?

The attempt of copying a constitutional political order inherent in the Western European regimes in Turkey under Mustafa Kemal Atatürk in 1924 and its acute rejection and the designing of their own “Islamic” model in Iran led by Ayatollah Khomeini in 1974 paved the way in the Muslim world for the future model of a socio-political organization and orientation. In fact, the two countries represent, to a greater or a lesser extent, an identification basis, or an initial burst and a benchmark for the countries of the Muslim provenance – though quite often degenerated and transformed into an authoritarian regime, especially after the fall of the Berlin Wall and the collapse of the communist regimes and the Soviet Union. Both countries contain fairly homogeneous religious or, even, ethnic structure, and produce radically different socio-political and constitutional creeds as the basic creed of political action, domestically and internationally. This narrative would, undoubtedly, lead to a polarization of the political climate and the social existence in general. Hereafter, the author would address exactly those components. It is especially important to note that the concepts in the paper are related to the basics of the constitutional and the political design and it does not include the recent developments in Turkey, such as the attempted coup and the initiative last constitutional changes that strengthen the power of President Erdogan.

## **KEMALIST TURKEY: MILITANT SECULARISM AND TURKISH NATIONALISM**

*Happy is the one who says, I am a Turk*  
Mustafa Kemal Atatürk

The transformation of Turkey as a pro-Western state with institutions such as the Western European ones began after the defeat in the First World War. A lot of factors contributed to the collapse of the Ottoman Empire and the change into a secular republic. Firstly, the continuum consists of: the growth of the Young Turks movement, a series of numerous national liberation uprisings of the various ethnicities in the Empire and, finally, the defeat in the Balkan Wars, the Great War and the peace Treaties of Sevres and Lausanne. On October 29, 1923 it was proclaimed the Republic and the very same day Mustafa Kemal was elected as its first president. Schulz notes that it, in fact, was the first victory of the urban nationalists over the old regime in the modern Islamic world, and the republic came to symbolize the victory. Its ideals, such as sovereignty and share of power, fully corresponded to urban the Turkish nationalist worldview, aimed at the “European discourse” (Schulze 2000, 53). Atatürk strengthened its position by implementing a single-party system, and under the guise of pacifism expressed in the motto “Peace at home – peace in the world”, he removed all the competitive forces that would threaten his power and authority. The multiparty system established itself almost a decade after his death.

Before the brief examination of the organization of the government, the central institutions and the fundamental values of the constitutional and the political order of Kemalist Turkey, several essential activities that contributed to de-islamization of the Turkish society should be pointed out: the abolition of the Sultanate, the abolition of the Madrasas, the abolition of the Caliphate, the acceptance of the Latin alphabet instead of the Arabic script, the prohibition of the fez and the turban as a social reactionary decadence, the declaration of Sunday as a holiday instead of Friday (Juma), the agrarian reform and the abolition of polygamy, as well as the legal equality accompanied by the suffrage of women etc. The series of such steps determines the roadmap towards Westernization and the exit from the traditional Orientalism.

Turkey is a Parliamentary republic whose political system is largely based on the position of the Parliament and the cooperation with the bi-cephalous executive. The constitutional order has experienced three general metamorphoses; from the concentration of power in the hands of the Parliament and the unreal separation of the powers between the legislative and the executive (the 1924 Constitution), through a bi-cameral legislative – introducing a Senate as a second (upper) House and strengthening the Government's position – the Ministerial Council (Bakanlar Kurulu) and the prime Minister (Bashbakan), the creation of the Constitutional Court, the separation of the party membership and the militarist provenance of the President (the 1961 Constitution), to the final stipulation of the fundamental human rights and freedoms as an integral part of the Turkish society, as well as strengthening the powers of the President, mirroring the French Fifth Republic and the abolition of the Senate (the 1982 Constitution), (Demiri 2009, 114).

The central institutions under the current Constitution have the following characteristics: first, legislative power is unicameral. The Turkish Great National Assembly (Turkiye Buyuk Millet Meclisi) counts 550 MPs with a five-year mandate that almost

always expires prematurely, due to the political preferences of the parties. The scope of authority is almost identical in all hybrid (parliamentary-presidential) modes: making and changing laws, political control of the Council of Ministers, budget approving, ratification of international agreements, decisions of war and peace, etc. Second, the executive is bi-cephalous with increased powers of the President (Cumhurbaşkanı) expressed through several parameters: to convoke a special session of the Assembly, the right to veto laws, to call a referendum on constitutional amendments, the appointment of the first Minister and pressing charges against legal and natural persons of disrespect for the Constitution and the laws, to appoint members of the High Education Council, rectors of universities, judges in the constitutional, military and cassation court etc, (Ahmad 2006, 1371).

On the other hand, the Council of Ministers (Bakanlar Kurulu) and the Prime Minister (Başbakan) are accountable to the Assembly for the implementation of the current domestic and foreign policy, whereupon the ministerial solidarity, apart from the individual responsibility is characteristic. Third, the courts, according to the provisions of the Constitution are independent and make decisions on the basis of the Constitution and the laws, and the Constitution in its regulations notes the State Council, the Supreme Administrative Court, the Supreme Military Administrative Court, the Supreme Military Court of Appeal and the Constitutional Court as organs of the justice system in the Republic. After the central state organs were briefly elaborated, let us view the fundamental values and principles of the political system of Kemalist Turkey.

### ***Turkish nationalism and populism (Halkçılık)***

The transformation of the Ottoman Empire in a secular Turkish Republic took the Turkish nationalism and the doctrines of Mustafa Kemal Atatürk as a starting point. This executed a radical shift in the identification database of the citizens and the legitimization of power. Instead of the former Islamic landmarks, nowadays, Turkish nationalism takes the role of a connective tissue of the Turkish society. Even the existing Constitution calls for Turkey to be devoted to the nationalism of Atatürk (Constitution of the Republic of Turkey, 1982, Preamble). Tamimi and Esposito suggest many political commitments that have modeled this concept. For example, the recomposing Turkish history, the elimination of much of the Ottoman past, the affirmation of the pre-Islamic period, the formation of the Turkish Historical Association and the Turkish Language Institution, even the mythological paradigm that Asia Minor is the homeland of Turkey, the cradle of humanity and civilization and the Turkish language the basis of all languages (Tamimi and Esposito 2000, 3). Extreme nationalist tendencies were stirred up through a lot of attempts the Islamic religious practices (prayer and ezan), instead of in Arabic, to be conducted in Turkish. In addition, “Altı ok”, or the doctrine of “the six arrows” that follows the Turanism (Panturcism) as a foreign policy orientation. The general motto of populism (Halkçılık) was expressed in the slogan “the people against the elites”, which certainly served to strengthen the nationalist rhetoric.

### ***National sovereignty***

The establishment of the Turkish Republic on the remains of the former Ottoman Empire meant a change in the legitim aspect of the Government. The former Sultan used to bear several titles that gave him political and religious position in society: Caliph (leader of Muslims), Emir al-Mumin (leader of the faithful) and Shaykh Lab Islam (regulator of religious issues) (Kulenovic 2008, 43). There is an evident religious inclination. Kemalism drastically changes this framework. Ataturk was named the immortal and the eternal leader, unrivaled in national history. The republican polity and sovereignty are exclusively and unconditionally based on the Turkish nation. The Turkish nation expresses its sovereignty through the authorized institutions that operate on constitutional principles. The sovereignty of the Turkish nation can not be transferred to any individual, group or class that is not in accordance with the Constitution (Constitution of the Republic of Turkey, article 6).

### ***Militant secularism***

One of the determinant specifics of the Turkish constitutional order and political system is the militant secularism. The steps taken for the de-islamization of the Turkish society were already stated. In addition, a significant moment was the de-shariaization of the Turkish legal system, as well as some points that insulated the ulema and plunged it into a marginalized position of the political life. Thus, the previous Sharia law was replaced by the dull takeover of the Swiss Civil Code, the Italian Criminal Code and the German Trade Law. In this regard, the former Sharia judges were retired and the religious schools either banned or periodically opened, however under a strict state control. Religious clothes outside the mosques were banned, religious titles suppressed, religious teaching in public schools was prohibited, all Sufi orders were declared illegal and Zakat (religious obligation) was strictly monitored by the state and military establishment. Moreover, the fierce form of the social and militant secularism got another dimension, a military one, through the role of the military. The military was a self-declared “guardian of the secular Republic,” the defender of the secular ideology and stability of the country (Tamimi and Esposito 2000, 3). Led by the self-set political iconography, the military itself, few times, directly or indirectly, participated in the overthrow of pro-Islamic governments (or Prime Ministers), the subject of the third part of the paper. Secularism was not founded only on the separation of religion and state, but it was contributed with hatred, bigotry, intolerance, rigidity and militancy against everything that showed even the smallest amount of religious affinities.

## **KHOMEINI'S IRAN: BETWEEN SHARIOCRACY AND MODIFIED THEOCRACY**

*Islam is our full guidance*  
Ayatollah Ruhollah Khomeini

Unlike Turkey, which is elaborated in the previous section, the situation in Iran is reversed. Iran has transformed its own political identity distinctively from West oriented to revival Islamist. The Islamic Revolution of 1979 was preceded by numerous turbulent political events that acted as a decisive factor for the revolutionary developments. Thus, in 1941, the Shah Mohammed Reza Pahlavi inherited the power from his father, Reza Khan Pahlavi. After the Second World War, he started implementing numerous pro-Western modernist reformatations i.e. the “White revolution”, similar to Kemalist Turkey. The emphasis was placed on language and nationalism, religious symbols, such as the Hijab, was withdrawn from the public life, with incorporation of the civil society and the Western civil legal codex (except the family law that received a modified expression through state-controlled Sharia courts). The victory of Mosaddegh on the parliamentary elections in 1951 (followed by his nationalization of the oil industry), that the Shah could not prevent; his abdication in 1953, his re-intronization and return to power with the help of his British and American allies after six days – all these events started electrifying the society in Iran (Akhavi 1980, 42). Deprivation grew linearly with the growing authoritarianism of 1961, when the Shah suspend the Parliament and eliminated the political opponents with the help of the secret police called SAVAK. The leader of the Islamic Opposition, the ayatollah Khomeini, was in exile, primarily because of his explicit political confrontation with the Shah and his acute rhetoric against the US imperialism. The 1979 revolution absorbed all social strata dissatisfied with the Shah’s regime (Islamists, secularists, Marxists, liberals, etc.), yet, still, only the Islamic provenance managed to institutionalize order, based on the Khomeini’s doctrine. From the political scene, from the administrative bodies, from the educational institutions and virtually all other social segments were eliminated anti-Islam parties, primarily secularists and liberals. Political and socio-cultural reflections were evident through the obligatory wearing of the Islamic dress, censorship of certain content in the mass media, compulsory teaching of the religious doctrines, the Islamic ideological army, education and culture. Iranian nationalism has been replaced by the construction of a Muslim nation of Iran, as an inseparable part of the overall Muslim community (Ummah). This kind of a set of policy interventions became a constitutional category (Constitution of the Islamic Republic of Iran, 1979, Preamble). The constitutional and political system of the Islamic Republic of Iran is a *sui generis* design, typical of the Persian territory, and its revolutionary and Islamic narrative – an inspiration for a series of attempts for installing an Islamic state. It is a combination of strong leadership, religious and legalistic establishment, nominal executive and consultative legislation. In addition, the most important of its features, through an institutional lens, are to be reviewed.

*First*, the central institution in the Islamic Iranian model is the Supreme Leader (Vali Faqih) – Ayatollah (Khomeini, then Al Khamenei), who has not only ceremonial, but, also, a real political power. He is, also, a chairperson of the leadership council (valiet), composed of the most eminent experts in the Islamic law and the Shiite doctrine of the twelfth Imam. It names the head of the judiciary, six members of the Council of the Guards,

commanders of all the armed forces, leaders of the Friday Juma prayers, and the head of the national radio and television, and decides on war and peace, as well. The election of the President of the Islamic Republic must be confirmed by the Ayatollah (Demiri 2009, 264). As a result of the constellation, the Supreme Leader controls nearly all aspects of the political life. Despite the political, the Supreme Leader, also, asserts spiritual leadership of the Iranian Muslim nation, because he comes from the eminent Islamic jurists (mujtahid), exegesis experts, members of the leadership council mentioned above. *Secondly*, the supervisory authority is concentrated in the Assembly of Experts (Madzhma el Neza), whose task is to appoint, monitor and control the operation of the Supreme Leader, to assist him in the creation of his politics and to initiate the process of the impeachment if the Ayatollah does not perform his tasks in accordance with the Constitution. This body is elected to fixed terms of 8 years, proposed by the Council of Guardians (Constitution of the Islamic Republic of Iran, 1979, articles 108-111). *Third*, one of the most powerful political bodies in charge of controlling the legislative party nominations for the elections and all the specific policy actions is the Council of the Guardians of the Islamic Republic (Shura-e Negbahan). It is composed of 12 members (six Islamic and six civil law experts – the first appointed by the Supreme Leader, and the latter by the Parliament and proposed by the Supreme Judicial Council), with a six-year term. The Council of the Guardians of the Islamic Republic has the right to veto on virtually any domestic political, economic and foreign trade initiative. *Fourth*, the executive, nominal and limited by the leadership and the Council of Guardians, is composed of the President and the Council of Ministers. The President is elected in general and direct elections, with obligatory confirmation by the Parliament to fixed terms of four years, with the right to one re-election. His role as head of the executive is to implement policies in line with the Constitution and the laws, setting and recalling of ambassadors, and a chairperson of the National Security Council. His power, as well as the power of his cabinet (the Council of Ministers) is limited by the institutions that listed above. *Finally*, the consultative legislation – the Parliament (Majlis Shura-i Islami) consists of 270 members elected for four years. The Constitution empowers this body to enact laws (actually, consults, because the final decision is to the Council of Guardians); it, also, empowers it to ratify international treaties, to elect Ministers in the President's cabinet and to initiate investigations on any political issue in the country (Alaedini at al, 2006, 621). As far as the judiciary is concerned, I would mention only the High Judicial Council composed of the head of the Supreme Court, the Attorney General and three members placed directly by the Supreme Leader, who at any time, may revoke. The Constitution guarantees their independence, impartiality and fairness.

After the institutional design was briefly presented, now, the stress is to be put on the ideological values and the fundamental benchmarks of the Islamic Republic of Iran.

### ***God's sovereignty (Hakamia) and Modeled shariocracy***

What greatly reflects the Iranian Republic, at least on the ideological level, is the doctrinal divine sovereignty (hakamia). The Constitution notes that the sovereignty belongs to Allah s.a.w.t., which is legitimate, and it is a submission to His will (Constitutional principle II). Unlike popular sovereignty, according to which the expressed will of the citizens is essential for socio-economic and political action, the Iranian system is based on an a priori given philosophy and principles through a divine revelation (Quran), and all

authorities, including citizens, have a duty to implement. Authorities have merely “limited” forms of administrating, because Allah S.W.T. is sovereign of any forms of life and they are governors who need to fulfill His will. The Constitution is determined as a declaration of social, cultural, political and economic foundations of the Iranian society based on Islamic principles and norms, which reflect the genuine desire of the Islamic community (the Constitution of the Islamic Republic of Iran, 1979, Preamble). This formulation clearly alludes to the Sharia as a legal order. However, the introduction of the republican model, alongside with the participation of citizens in the selection of holders of certain public functions (Constitutional principle I) for which there are no distinctively precise provisions in the Koran, as well as the modifying of some provisions of domestic, commercial and even criminal law, provides the opportunity, this model regime to be assessed as modeled shariocracy.

#### ***Rule of eminent Islamic jurists (Velajet e Faqih)***

The Iranian Constitution affirms that the Islam is a comprehensive way of life, which serves as the basis of the Government and, also, regulates the legal relations of religion and society (Demiri 2009, 259). Yet, what is specific to this system is but the power of the eminent Islamic jurists (Velaet e Faqih). Since, as already mentioned, the system is based on hakamia and on the modeled shariocracy, with the authority of the Islamic experts (Faqih) and lawyers (mujtahid), a logical consequence is that, according to this worldview, the crucial guidelines for political action to be concentrated clearly in these figures. The supreme legal and religious experts (imams, Faqih) are concerned, that symbolize the fusion between the Islamic religion and politics as two mutually inseparable components. The system is still open to some level, because everyone has the right to study the Islamic law and to be Faqih. It is evident that this is a modified theocracy with Republican elements (available only for the participants of the Islamic affiliation), yet only through the prism of the European discourse, since the Islam does not recognize priesthood as an allusion to the religious establishment in Christianity. On the other hand, the practical discourse is very well perceived by Gellner, who states that in the absence of a tribal society and a support by His leadership (as the one of the Shah), the religious educated lawyers and experts can govern, tracing an egalitarian and an anti-intermediary current in the Islam (Gellner 1992, 18).

#### ***Twelver doctrine (Ithna Ashariyyah)***

Inseparably connected to the Valiet Faqih principle of power is the official Shiite doctrine, Ithna Ashariyyah, which is overwhelmingly dominant in Iran. The doctrine recognizes twelve blood related successors (Imams) to the Prophet Muhammad, i.e. related by blood to His nephew and son-in-law Ali. The twelfth imam Muhamed al Muntazan “disappeared”, or retired from the world in 874. The return of the mysterious imam is expected in the last age of the world, when as a true believer and a leader (Mahdi), he would rule the country, establishing order, justice and a just Islamic order (Esposito 2003, 62). In this sense, Khomeioni’s doctrine Valiet Faqih composes a system of governing until the reappearance of the twelfth imam. Thus, his absence is substituted by the Islamic jurists and the Grand Ayatollah. Should the question: how the system would look like on the possible “return” of the twelfth imam be posed, Khomeini solves the dilemma by transcending his power in a spiritual and a symbolic way.



## **POLITICAL REPERCUSSIONS OF TURKISH AND IRANIAN CONSTITUTIONAL DESIGN**

*That government is best which governs least*

Henry David Thoreau

Secularism and Islamism as concepts of the constitutional and the political model represent a model and a condition of all spheres of the political system in the contemporary Muslim states. The repercussions resulting from such a political constituency in the design of Turkey and Iran are visible, primarily, in terms of the actions of the central institutions, the political parties, the civil society and the political culture they create as agents of the political socialization. In addition, the two most important components where such repercussions are most pronounced would be discussed.

### ***Ideological and political indoctrination***

Both systems are highly ideological and their consequent indoctrination is helped by two key institutions. In Turkey, it is the army and in Iran – the Council of Guardians. The ideological and the political indoctrination reflect all segments of society. Thus, in Turkey, despite the Turkish nationalism elaborated in the previous section, the image and the act of Mustafa Kemal Atatürk is clearly cultivated to the high level of sacrament. His photos are visible everywhere, and his posters, banners and similar symbols were part of every manifestation. Even the Constitution stipulates him as an eternal and an indisputable leader of Turkey, unrivaled in national history. Ayşe Kadioglu notes that the political inclinators of Atatürk are related to the hatred of religion, even when sometimes the populist used religious symbols for respect (Ayşe Kadioglu 1998, 11). A good example of the hypocrisy of the Turkish authorities, apart from recomposing of history, was the February 1998 law according to which the children were required first to complete eight years of secular education, and then to be allowed to attend the madrassas. The summer and the weekend study of the Quran were completely banned. Female pupils, female students and female teachers were forbidden to wear Hijab, even in Islamic schools, and such a ban existed many years before in other educational and government institutions (Tamimi and Esposito 2000, 5). The monopoly of the Turkish secularism is visible even in the work of the Islamic Community, so, in all religious ceremonies, it is insisted on putting special emphasis on the Turkish nationalism, the respect for civil law and order, as well as the governing authority.

Iranian case represents the other side of the same coin. Almost no activities incompatible with the Koran and the Islamic religion were permitted. The obligation of wearing Islamic dress in public life and the so called “Cultural revolution” that aimed at Islamization of all spheres of society, including universities, grew at a fast pace. Non-Muslims were ordered to refrain from “behavior offensive to Muslims” and were excluded from all departments, except foreign languages and mathematics (Bakhash 1984, 226).

The rhetoric was full of indignation, fanaticism and grotesquely shaped pacifism. The following statement of Khomeini best confirms our findings: “We want to expand Islam everywhere, but that does not mean that we will exported with bayonets [...] If governments adhere to Islamic principles we will support, if they will not, we will fight them without fear of anybody!” (Esposito 2001, 172).

What is more, the request of a death penalty of Salman Rushdie, the author of *The Satanic Verses*, only serves as a mobilization base for the militant Islamic structures and the affirmation of Iran's position in the region and, primarily, for the strengthening of the ideological and political indoctrination in society.

### ***Controlled and doctrinaire - limited multipartism***

The Turkish and the Iranian constitutional political model are but exclusive modes or systems exclusively open to entities that adhere to extremely ideological constitutional and political formations. In the first case, the limitation applies to entities that do not accept rigid secularism, while in the second, the political actors that express preferences beyond the Islamic doctrine. Such a designed framework narrows down the circle of possible participants in the political process.

Until 1998, the Iranian constitutional and legal order did not recognize the existence of political parties. The Shiite religious and political paradigm perceives itself as a party (the party of Ali) and the Husein's martyrdom in Kerbel, as well as the defeat of his forces of the army by Jezid the Caliph in 680 had a particular influence on the emerging of the Revolution in 1979. In that context, after the revolutionary transformation, a party system led by the Islamic Republican Party was established. However, the "stabilization" of the system and the attempts for the "democratization" and openness resulted in the Constitutional Amendment which approved the existence of political parties, provided they are not contrary to the Islam, the national sovereignty and the Islamic unity (Alaadini at al. 2006, 623). Such a constitutive formulation, obviously, leads to a controlled multipartism, lead by a key institution with the authority to check their loyalty to the existing order and to approve or to veto their work for the Council of the Guardians of the Islamic Revolution. For example, much of the ideological opposition (royalists, Marxists) were forced into exile. First, the Iranian Resistance Movement led by Shakur Baktair of the Social Provenance was forced to act from Paris. Yet, Ayatollah Khomeini was not merely limited to the ideological competitors. Also, the eminent political and religious experts and activists, such as Ali Sharia, Bazargan, Talikani and Sherijatmadari were forced to resign, to go into exile or to be processed due to alleged involvement in the conspiracy. We should not be fooled by the intentions of the reform wing, whose representative was Khatami, also, we should not be fooled by the Iranian Green Movement lead by Hussein Mousavi to adapt and liberalize some institutions (for example, increasing the power of the Parliament). The intention to democratize the Islamic political structures was permitted, yet not the ideological opposition. No legal political structure in Iran attacks the Valette Faqih principle, otherwise it would not be granted with its existence and the run for parliamentary elections. The main Parties: the Coalition of Builders of Islamic Iran (Ahmadinejad), the Islamic Coalition Party (the Asgaroladi) and the Union of Islamic Architects (Muhammad Reza Bahor) are firmly committed to the Islamic constitutive political principles.

The Turkish case is largely equivalent to the Iranian model. Kemal Ataturk's establishment of the militant secularist order resulted, primarily, in a one party system – the Republican People's Party. The situation did not change until 1946, when, for the first time, multiparty elections were held, and the Republican People's Party was defeated and the Government took over the Democratic Party. However, the key player in the multiparty system was the military. It made a coup three times: in 1960, in 1971 and in 1980. The first

time, led by General Cemal Gursel, the Government of the first democratically elected Prime Minister – Adnan Mendeles, was removed from the administration, due to the close relations with Moscow, as well as, initially, due to the affirmation of the Islamic affiliation. After the coup, he was sentenced to death by hanging, and, later, rehabilitated. The second time, due to internal unrest, the government of Suleyman Demirel was toppled. The army headed by General Memduh Tamaç intervened in the political events, arbitrarily interpreting the existing political order as unsustainable. The third time, one of the most prominent events of 1980, the 1980 coup d'état, showed the true side of the war establishment. The series of violence, the religious “awakening”, the trade unions and the strikes were, again, a reason for the military to take over the power. Yet, this time, it resulted in the establishment of a military junta, the suspension of the activities of all political parties and in the arresting of many of the political leaders. General Kenan Evren (who, later, via a referendum, was elected a President), together with the head of his cabinet, Bulent Ulus, again, ousted the re-elected Prime Minister Demirel, and they declared martial law and banned all the political and trade union organizing. The action brought to nearly half a million people (among which prominent leaders, such as Suleyman Demirel, Bulent Ecevit and Nedzhmatin Erbakan) and processed about 280 000, with about 50 death sentences. The military estimated each power according to its own ideological worldview, putting itself in the role of an undisputed guardian of the secularism, and against the conservative and Islamist currents. It was the organizer and the controller of the elections in 1983, and only 3 of 15 newly-formed parties were allowed to candidate for the elections (Ahmad 2006, 1368). Finally, in 1995, when Turkey received its first Islamist Prime Minister, Nedzhmatin Erbakan, the military forced him to resign his Memorandum and his Welfare Party (Refah) was banned. In this regard, General Cevik Bir, in April the same year, publicly announced that the Supreme priority of the military is to combat with the anti-secular Islamists (Tamimi and Esposito 2000, 5). Almost three and a half decades, the military had dominated initiatives for banning by the Constitutional Court and some political and religious organizations. Consequently, from the political life were eliminated: the National Party, the transformed National Salvation Party (both of Erbakan) and the groups “Followers of the Light” and the Sufi brotherhood (Mardin 1983, 144). The emergence of the Justice Party and the Development Party (AKP), as well as the leader Recep Tayyip Erdogan in the political ether, moved this discourse, bringing affirmation of the religion in the social life and recognizing the contribution of it in the moral construction of the individual; yet it must not be forgotten that it is essentially secularist and with Islamic inclinations. The strong traces of Kemalism limit every Islamist tendency to manifest in its original frames and force each entity to accept secularism as a priori designation in its action. Although a lot of laws and judicial processes limited the military's political involvement, AKP, accepting the Kemalism contribution, as well as banning the National worldview Islamic group (Milli Goruz), the Hismet and Fethullah Gulen movement, only managed to curb the militant secularism, (yet, still remaining within the secularist discourse) and it managed to give another dimension to the further political developments.

## CONCLUSION

The models discussed in the paper undoubtedly represent exceptionally strong constitutive-political benchmarks that gave dimension to the structure of the Muslim countries in the recent decades. They themselves are a framework that paves the way for further developments of the political scene in the Islamic world. Such a constellation undoubtedly raises the issues that are imposed in the introduction. Based on the elaboration, some concluding remarks can be singled out. They would capture the general image of the upcoming presentations, as well as reconfirm the thesis.

*Firstly*, the Constitutive political design in both cases is different. The relationship between the authorities and their mutual control and balance is expressed through different structures, but it does not transcend the impression that the main impetus is the individual leader (in Turkey, until some time ago, the Prime Minister and, recently, the President, while, in Iran, the Ayatollah). The relationship between them and the pivotal element in charge of controlling the political processes (the army, or the Council of Guardians) is of great importance, so in the Turkish case, periodic cohabitation can be noticed, while in the Iranian, a permanent harmony.

*Secondly*, it is obvious that both systems have political and ideological exaltation that gets codified through the constitutional provisions and principles. The systems are very limited for the opposite ideological movements. The institutional “filters” of the regimes that keep the sacred Kemalist-secularist or Islamist vocation were the military (though, now, with limited powers, yet, still a strong influence) and the Council of Guardians of the Revolution. The substantive differences in the two types are precisely the emphasis of some vis-à-vis other fundamental values of the system, with almost equal mechanisms of their “protection” and control.


*Thirdly*, it is indisputable that both models have exclusionist nature and that promote one, at the expense of other ideological and political subject. The Turkish model preferred the secularists, declaratively and practically, and the Iranian – the Islamists in their genesis and programmatic orientation. In such a manner, they essentially stifle the ideological and the political pluralism, that is to say, they create an explicit ideological superiority, leaving no opportunity for value match and dialectical development as a consequence. Furthermore, since both regard the discourse opponents as idiosyncrasy and indignation.

*Fourthly*, due to these variables, it can be concluded that the absence of a different ideological opposition, through controlled and doctrine-limited multipartism, characterizes the regimes as undemocratic. An essential agent of democracy is the political pluralism, not the facade multipartism. This is not case with the restrictions for safety reasons, although they are often invoked. The political parties discharged in the past had no indication of violent seizure of power or of inciting national or religious bigotry, so their sanction would be justified.

The direction of future development, i.e. pluralism of Turkey and Iran, to some extent, remains an enigma because there are no indications that they would be open to the opponent political factors. Perhaps the situation in Turkey is slightly more predictable due to Erdogan's inclination towards religion and its respect in society. However, authoritarian tendencies associated with stalling of human rights and freedoms, in particular freedom of speech and the media, would not improve the image of the Turkish political system, that is

to say, one shortage would replace another. The reformist wing in Iran, again, shows attempts to democratize the Islamic Republic, to increase openness to the West, yet it is not yet ready to accept the secular political parties in its core, or to show inclination towards freedom of choice of lifestyle or towards the liberalization of other segments of the social milieu. In this regard, the thesis of Zakaria for illiberal (i.e. judging by our framework, unpluralistic) democracy seems illusory. Economic rights and freedoms, without political and civil society, cannot be sufficient for a society to be called democratic.

Benchmarks that would lead to eventual harmonization in the divided Muslim world in both cases should be based on mutual tolerance among secularists and Islamists; or as Martin Heper says: “A marriage between Islam and democracy in Turkey can be consummated if the radical secularists stop trying to impose their preferred life-style and set of values upon the Islamists, and if the latter do not undermine by word or deed the basic tenets of the secular democratic state in Turkey” (Heper 1997, 45).

The very same, but in reverse, would apply for Iran, too. The attempt of their leveling and of placing them together is not impossible, although such a “marriage” requires a long and difficult period of building. 

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Indexing

Abstracting

## SELF-DETERMINATION AND POWER: A HUMAN-CENTRIC APPROACH TO THE INTERNATIONAL RELATIONS

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### *Abstract*

*This paper analyzes the importance of self-determination in international relations. It explains the puzzle why some small regions or group of people are ready to be small states by separating from big powerful states. The self-determination of a nation is preferable to the people than a military power of the large state. The military power of a state may not translate into a better life of people. So people's empowerment cannot be treated the necessary outcome of state's military power. When one group of people feel as marginalized in national policymaking and its implications, they show a secessionist tendency. This paper contends that people may prefer their ideology, identity and self-determination than the power of the state.*

*Key words: Identity Politics; International Relations; Power; Secessionist Movements; Self-Determination*

## INTRODUCTION

Self-determination and secessionist tendency of smaller territory from the powerful state have increased after the cold war. Since the conventional theories take states as granted, they do not analyze this secessionist tendency of people. As per conventional wisdom of realism, power is necessary for every state for ensuring their survival in the international system. States increase their power either by increasing their own military capability or by allying with any other powerful country. But, since today's ally may be tomorrow's enemy, self-help is an only proper way for survival in the international system. For Mearsheimer, the alliance is a temporary marriage" (Mearsheimer 2001, 30). These assumptions of the realism arise many questions regarding secessionist movements.

Because, even though to be part of a family of the big state is not a “temporary marriage” but a permanent membership, still secessionist movements prefer small sovereign state. An analysis of secessionist movements in a different part of the world, for example, Kashmir and Quebec, reveal that people are aware that their state would be a “weaker one” if they separated from existing state. But still, they prefer separate state and self-determination rather than a military power of the state. This attitude of people questions the traditional notion of “national interest which is defined in terms of power”.

This paper analyzes why some states or group of people prefer self-determination rather than power. The first part of the paper will outline the meanings of self-determination and power. It will describe different opinions on the legitimacy of secessionist movements and rights of people for self-determination. Then, it will describe the importance of the concept of “self-determination” in international relations. It will analyze the reasons behind the neglecting of this idea from the mainstream literature of IR. Then this paper will present a people-centric view to understanding how a new nation born and the motivations of people to cooperate or to conflict in a nation building process. Then it looks what is the more important factor for self-determination and nation building whether it is power, identity, prosperity or anything else. It will analyze different historical and contemporary examples. Finally it concludes by taking “identity” as an independent variable and self-determination tendency as a dependent variable. It will consider many other intervening variables also.

## **POWER AND SELF-DETERMINATION: A CONCEPTUAL UNDERSTANDING**

According to realist understanding, power is seen as equal to force or military power (Waltz 1954). Some neorealist scholars like Alfred F. K Organski (1968) have defined power as “possession”. According to both of these definitions of neorealists, which consider power in the distributional structural term, each state should try to increase its share in this structural distribution. But this definition of power cannot answer the question why some states prefer to be smaller one and autonomy rather than become part of powerful states. This concept of power fails to explain the emergence of small states after cold war separated from other countries. So the concept of self-determination seems to be relevant here. The neorealist concept of power does not relate with the empowerment of people and their welfare. In some occasions, increasing the military capability of a state may affect negatively empowerment of individuals.

On another hand, a nation’s inherent right to decide its destiny is one of the most common and recurring notions in the definitions of self-determination. Franck provides a slightly expanded version of this idea when he defines self-determination as the “right of people organized in an established territory to determine its collective political destiny in a democratic fashion” (Franck 1991, 52). Many scholars see self-determination just as a separate independent state while some other scholars consider democracy as important criteria for ensuring self-determination. Another viewpoint is to define nationalism and self-determination in cultural view point. According to this understanding, the self-determination means to get autonomy for practicing and protecting a group’s culture. According to Anaya, “self-determination may be understood as a right of the cultural groupings to political institutions that are necessary to allow them to exist and develop according to their distinct characteristics” (Anaya 1990, 842).



In the issue of legitimacy and rights of self-determination also scholars belong to different schools. Liberal schools justify self-determination because of its positive impact on individuals. Romantic nationalist theorists justify in the name of the greatness of a nation and see self-determination as prestige for it. So according to them, individual is not much important. Marxists see nationalism and self-determination have impacted negatively main goal of proletariat revolution. The support for self-determination may end in support for a dominant class of the society. Marxist believed complete self-determination could be achieved only through the socialist system.

The development after Second World War promoted self-determination of the states. UN General Assembly 15<sup>th</sup> Special Session (1960) adopted a resolution saying “All people have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights (adopted by the General Assembly on 16 December 1966) reaffirmed this right to self-determination.

But the concept or right to self-determination was not extended beyond colonized countries. A general notion of leaders and mainstream academicians is to keep existing international boundaries as boundaries forever. Before 1990, only Bangladesh was the successful case for self-determination. Many countries made a reservation in their adopting International Covenant on Civil and Political Rights on the issue self-determination. According to Buchanan (1991) and Birch (1984), there is no basic right for self-determination. Secession is allowed only in response to the injustice of the central government and due to the lack of representation in the government. So in a democratic state, people have no right to choose the secessionist way. Scholars like Donald L. Horowitz (1988) considered secessionism as an undesirable way. He suggested it would lead to problems of the minority in new states and ethnic cleanings.

Some scholars like Harry Beran (1984) and Daniel Philpott justify secession arguing that if the majority of the population wish to secede, they should have the right to do so. This approach, known as a choice or primary right theory, is based on liberal ideas of autonomy, free association, and consent. Although this approach is supporting secession, it is only with some conditions: 1) support of the majority and 2) assurance of human rights of the minority in the new state. Another viewpoint is to allow secession if it is based on different “nation identity”. David Miller (1988), proposed this viewpoint in his work “Secession and the Principle of Nationality”.

The main problem in defining self-determination and to analyzing its legitimacy and consequences is the difficulty of the defining “self”. What does constitute self? Is it a group of people with particular identity? If it so what is the basis of identity? Is it an ethnic group? Religion? Region or language? The difficulty in understanding self-determination is each person may have a different identity. So, this paper prefers to choose each identity as independent variables. But, many intervening variables are necessary to translate these identities to a dependent variable that is self-determination. The feeling of discrimination and mobilization by any leader are considered as an intervening variable to strengthen the separate identity (nationalist) feeling and to mobilize for self-determination.

### ***Why self-determination?***

These questions need at least two set of answers: First one, why state/ group of people choose self-determination even by avoiding the possibility of to be part of the powerful state. Is it just an emotional expression of identity against the rational choice of power? Or is it a way for self-empowerment and prosperity by the small representative state against continues ignorant of government of powerful state?. The second question is that why does this paper consider self-determination so seriously than traditional state and power-centric approach?


People prefer self-determination for different motivations such as identity, discrimination against particular region, separate historical background, lack of representation in the government and personal interest of certain individual to get power through creating separate state. It leads to a new question that which is more important to people? Is it power or identity or anything else? Realists give too much importance to power. But the experiences of dismemberment of USSR and secessionist tendency in Kashmir suggest that states' power may not translate into increasing loyalty among people or improving their life and prosperity. The nuclear weapon of a state may not lead to better life or security of common people. Even though the USSR was a great power in the world during the cold war, it was not translated into the feeling of "greatness" among common people especially those lives outside of Russia. The people in Xinjiang of China or Quebec of Canada do not consider themselves as part of the strength of their state at international level. The examples of China (Xinjiang), Canada (Quebec), Sri Lanka (Tamils), USSR (CIS States), UK (Irish) and anti-colonial freedom struggles suggest that the mobilization for self-determination happen throughout the world whether it is First, Second or Third World. It occurs in both developed and developing countries and both great and small powers. In some cases, this struggle happens in the name of certain identity: ethnic, linguistic, regional or religious identity. In some cases, certain identity overweighs another identity that was the base for state creation before. For example, Pakistan separated from India in 1947 and religious identity of Islam was the base for integrating people in the nation building. But in 1971, Pakistan was divided, and Bangladesh was created based on ethnic identity. In some pluralist countries, people with different identities are living together without secessionist tendency. For example, India, which can be theoretically divided into hundreds of nations, still continues with diverse identities. Even though there are different separatist movements, most of the movements are ready to live in India, and many identities do not show a secessionist tendency.

So even though, identity is the basis for self-determination, it alone does not lead to secessionist tendency and aspiration for self-determination. Many intervening factors are important in the outcome. An external factor like discriminative policies of government acts as one of the intervening variables. Some leaders may be necessary for strengthening the certain identity of people and mobilizing them to the goal of self-determination. The leaders may use these discriminative or oppressive policies of central government to get certain personal interests. However, they mobilize people mainly based on their identity. Even though the identity is used to mobilize people, but many times strengthening the glory of "nation" is not an end, but a mean to get self-determination and individual prosperity and empowerment. So in some occasion, single identity group may separate into different states. For example, GCC countries belong to single identity in their religion (Islam), sect

(Sunni), language (Arabic) and ethnicity (Arab). But still, they prefer to be a separate state. It shows self-determination is preferable to people more than their identity also.

So the role of “self-determination” is important than the power of state or identity of a nation. People prefer it as a way for self-empowerment and prosperity that is not necessarily available through the state military power. The concept of “self-determination” is important to understand why the people show secessionist tendency when the states’ power gradually declines in this globalized world system. It gives an answer to the second question that why the self-determination is so significant than traditional state and power-centric approach.

## **CONCLUSION**

The concept of “self-determination” is very useful to understand the secessionist tendency of people. The military power of the state is not nor the primary object of the people. They want their own prosperity and empowerment. When the power of the state is not translated into the empowerment of the people, they prefer their own empowerment and identity rather than state’s power. State’s power in military terms is seen as an interest of some minority elite class. People feel as “alienated” from the government policy and interpret it as marginalization of a particular identity. The intervening factors like discriminative policies of government and mobilization by leaders translate independent variable of identity to dependent variable, which is self-determination. 

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## INTERNATIONAL LEGAL ASPECTS OF DEALING WITH THE CONTEMPORARY TERRORISM THREATS

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### *Abstract*

*Recent challenges in international security posed by two terrorist organizations, Al Qaeda and ISIS, have highlighted an urgent domestic and foreign policy challenge. Terrorism has been, for more than a decade, top headline in the world media, and the cost of terrorist activities is expressed in numerous human lives and enormous material damage. Yet to date, international organizations and governments have not been successful in the attempt to find a common definition or uniform approach. Up to now, the approaches towards terrorist activities differ from case to case. There is no single legal regime to deal with terrorist activities, and the legal regime is what gives the answer and the framework for the counterterrorist activities of the security forces, in order to be able to deal with the threat. This paper will attempt to answer at least some of the dilemmas.*

*Key words: terrorism; law; extraterritoriality; applicability*

## INTRODUCTION

Terrorism has been trending topic at the world's media for more than a decade. Although as a tactic of warfare it follows society more or less during its development for centuries, terrorism daily gains new dimensions and manifestations, and still is lacking consensus over the conceptual definition as a serious threat to national and international security. During the last few centuries, humanity has witnessed several patterns of terrorism and the twentieth century added new patterns to terrorism (Schmid 2011). There are numerous conventions that define certain manifestations of terrorism, addressing the way states should deal with the threats of terrorism, but not a single, comprehensive document.

State practice differs and in absence of comprehensive legal regime, applicable law should be defined on case by case analysis.

## **INTERNATIONAL NORMATIVE ACTIVITY APPROACHING TERRORISM**

Many regional and international bodies have addressed different forms of terrorism since the early 1970. However, more intensive activity in the field has been produced during the post-Cold War period and especially after the 9/11 attacks.

Post-Cold War period brought new actors to the international legal scene: old enemies became partners and old dogs were supposed to learn new tricks. A great stated dissolution occurred and the right of self-determination got different meaning (Frckovski 2005). Such situation was urging for different legal solutions, so different forms of terrorism were approached through different legal mechanisms, such as:

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973;
- International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979;
- International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997;
- International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999;
- International Convention for the Suppression of Acts of Nuclear Terrorism New York, adopted by the General Assembly of the United Nations on April 13, 2005;
- Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963 (deposited with the Secretary General of the International Civil Aviation Organization);
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970 (deposited with the governments of Russia, Great Britain and the United States);
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971 (deposited with the governments of Russia, Great Britain and the United States);
- Convention on the Physical Protection of Nuclear Material, signed in Vienna on March 3, 1980 (deposited with the Director General of the International Atomic Energy Agency);
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving of International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on February 24, 1988 (deposited with the Governments of Russian Federation, United Kingdom and the United States and the Secretary General of the International Civil Aviation organization);
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988 (deposited with the Secretary General of the International Maritime Organization);

- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988 (deposited with the Secretary General of the International Maritime Organization);
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988 (deposited with the Secretary General of the International Maritime Organization);
- The Arab Convention on the Suppression of Terrorism, signed at a meeting held at the General Secretariat of the League of Arab States in Cairo on April 22, 1998 (deposited with the Secretary General of the League of Arab States);
- Convention of the Organization of the Islamic Conference on Combating International Terrorism of July 1, 1999 (deposited with the Secretary General of the Organization of the Islamic Conference);
- European Convention on the Suppression of Terrorism, Strasbourg, on 27 January 1977 (deposited with the Secretary General of the Council of Europe);
- Convention on prevention and punishment of terrorist acts, taking into account the form of crimes against persons and related extortion that are of international importance, signed in Washington on February 2, 1971 (deposited with the Secretary General of the Organization of American States);
- Convention on Preventing and Combating Terrorism, adopted in Algiers on 14 July 1999 (deposited with the General Secretariat of the Organization of African Unity);
- Regional Convention on Suppression of Terrorism, signed at Kathmandu on 4 November 1987 (deposited with the Secretary General of the Association of South Asia Regional Cooperation);
- The cooperation agreement between the member states of the Commonwealth of Independent States in Combating Terrorism, done at Minsk on 4 June 1999 (deposited with the Secretariat of the Commonwealth of Independent States).

Although all of the above mentioned documents address different aspects and specific acts of terrorism, they rarely address potential effective mechanisms in practice. Implementation is probably even bigger problem rather than precise normative work. Forms of manifestation of terrorist acts also change on daily basis, so some legal instruments have overcome already until the ratification process ends.

### ***UN Security Council normative activity in the field***

When Talibans attacked New York Twin Towers, it was the first time for the United Nations to recall upon the UN Charter for common action against a terrorist attack. Many resolutions followed, such as:

- 1267 relating to Al Qaeda;
- 1333- addressing the Taliban regime;
- 1368- condemning the 9/11 attacks;
- 1390 -frizzing funds of the Taliban regime;
- 1373-prevention and suppression of terrorist financing and forming a committee;
- 1456 – counterterrorism, IHL and IHRL;

- 1526 -measures against al Qaeda;
- 1540 -proliferation of weapons of mass destruction;
- 1624- addressing support for terrorism;
- 1735-sanctions for Al Qaeda and the Taliban regime;
- 1822 -threats to world peace and security from acts of terrorism (Security Council Resolutions Pertaining to Terrorism | UN Counter-Terrorism Committee 2017).

The phenomenon of terrorism is probably one of the most changeable, but also one of the most persistent companions of the society over the last few centuries. During the last 50 years, rapid changes occurred in the means of conducting and final objectives to be reached. Certainly, the most dramatic change were the 9/11 attacks on the Twin Towers in New York in 2001. More interesting is that after those attacks, NATO activated article 5 of the Washington Treaty (Spokesman: US Asks for NATO Aid 2017). This was the first time in the history of the Alliance that article 5 was activated in a way that enables acting against none state actor, meaning that the terrorist attacks have been considered as armed attack- in the way UN Charter considers it.

There is neither a comprehensive United Nations treaty on terrorism nor an official definition of the term “terrorism” for the time being. However, the Member States of the United Nations are in the process of drafting a comprehensive convention on international terrorism which would ultimately provide such a generic international definition of the crime of “terrorism” and complement the existing legal framework of international antiterrorism instruments (UNODC 2009).

## **STATE PRACTICE**

Checking state practice and the way states deal with terrorist activity has shown that the approach and strategy also differs a lot, depending on the context in which the activity took place or it was planned to be carried out. From that aspect, state’s approach to terrorism can be considered as dealing with:

1. Criminal act,
2. Internal armed conflict,
3. International armed conflict (equivalent of war) (Majoran 2017).

The way terrorist activity has been approached, defines the type of counter-terrorist operation and the law that will be applicable. The way states approach terrorism is important for regulation of the use of deadly force and the legal regime that is applicable. Applicability of the legal regime is defined by the facts on the ground and certain operational circumstances. This means that the use of deadly force will be governed by human rights law or the law of armed conflict, or by parallel regimes in certain circumstances (usually occupation or peace operations).

### ***The challenges***

The first challenge for the European states engaged in peace operations that included also dealing with terrorist attacks in Afghanistan and Iraq was the extraterritorial applicability of the European Convention of Human Rights and Fundamental Freedoms.



The extraterritorial applicability of human rights was also confirmed by Human Rights Committee. Additional challenge when it comes to use of drones are the issues of sovereignty. Besides that, targeting doctrine can hardly be justified if the globe is considered as battlefield. It simply goes beyond the human rights standards that were so hard to be achieved even nowadays, such as due process of law on a personal level, and the idea of independent, sovereign states on national level, as well as the idea of collective security and the UN as a global peace keeper.

The use of deadly force for dealing with non state actors and individuals inspired by global ideas, such as Breivik in Norway, or the global jihad of the Taliban, is a grey zone for the international law. Many experts have agreed that what is needed are rules that would deal with the use of force against non state actors, as strong and clear as those for dealing with state actors.

What can be given as an input while clear framework is lacking, is combating terrorism in context that would put counterterrorist operations under the blanket of the legal regime that is applicable in general: human rights law or law of armed conflict. Speaking about applicability of human rights law, two international documents are the most important: The International Covenant on Civil and Political Rights: (International Covenant On Civil And Political Rights 1966) and the European Convention of Human Rights and Fundamental Freedoms (European Convention On Human Rights: Collected Texts 1988). Framework that provides access must be based on legal grounds, from which arises the methodology of the counterterrorist operation, and the overall response to the removal of the threat and consequences.

## **APPLICABLE LEGAL REGIME FOR COUNTERTERRORIST OPERATIONS**

### ***International humanitarian law vs. the Law of armed conflict***

The law of armed conflict (LOAC) and the international humanitarian law (IHL) are usually referred as synonyms. However, in the author's view, although both terms are pretty often used to refer to the same, term "law of armed conflict" is considered to cover a broader spectrum. Law of armed conflict refers to both *ius ad bellum* and the *ius in bello*, meaning that it addresses both the *law of war* and *law in war*, while the international humanitarian law affects the *ius in bello* aspect only. For the purpose of this chapter, usage of the term "international humanitarian law" is more appropriate due to the fact that what matters here is *protection* as a concept. The focus of international humanitarian law is put on the civilians and persons that do take (more) direct participation in hostilities, as well as civilian objects and infrastructure. Law of armed conflict is a bit wider concept- it includes the protection that has been discussed above (referred here as international humanitarian law or *ius in bello*, consisted by "the Geneva law" that protects and the so called "Hague Law" that addresses the means and methods of warfare - that has the idea to limit the acts in war) but it also includes the so called "right to go to war". The "right to go to war" is a bit obsolete definition or a concept- nowadays it affects the right of the states to use force and it is ruled by the United Nations Charter.

The usage of the terms "international humanitarian law" and "international law of armed conflict" as synonyms is not wrong- however author finds preferable the usage defined by the separation of the *ius ad bellum* and *ius in bello* concept. LOAC is organized

around the assumption that parties to an armed conflict are “combatants,” meaning that they are members of a state military acting in the name of that state. Norms of conduct are unclear with regard to non-state actors, and there are few consistent legal principles to provide guidance. The absence of a clear alternative to traditional law of war principles, coupled with the need for a strong defensive response to the threat of terrorism, has a deleterious effect on the maintenance of rule of law values in the current climate, and may also hinder efforts to carry out such a defensive response effectively.

### ***International humanitarian law vs. International human rights law***

Although *protection* is important for both international humanitarian law and the international human rights law, it is defined and implemented differently in each of the context. This is mainly because those two legal regimes are applicable to the different factual situation: international human rights law applies at peace time, directly or transposed into the national legal system, depending on the way the national constitution defines it. International humanitarian law is applicable in case of war or its equivalent- de facto occupation. Things get complicated in post-conflict societies, when there is not an effective control over the territory. Those situations are pretty commonly combined with international presence – peacekeeping or peace enforcement missions. In such cases, peacemakers are also obliged with the mandate provided by their mission, and for the most cases peacekeepers are obliged predominantly by the rules of international human rights law.

### ***Use of force allowance***

There is a general forbiddance for use of force in the relations between states in accordance with the United Nations Charter:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations (UN 1945).

However, there are two exceptions: restoration or preserving of world peace (action by the Security Council) and individual or collective self-defense (actions that has to be reported to the Security Council of the United Nations):

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security (UN 1945).

Use of force for dealing with violent non state actors (armed groups) and individuals is not regulated by the Charter of the United Nations. Experts have agreed that what is necessary are rules that would address with the use of force against non state actors, as strong and clear as those for dealing with state actors. In some cases, armed groups can receive the status of a subject of international law, but this goes mostly for liberation movements, after satisfying the preconditions required by international law. This is not the case with terrorist groups.

There is a broad international debate if a third case that allows use of force is possible- and this is the self-determination of the peoples treated by the International Covenant on civil and political rights. However, the view that is predominant is the one that goes *a contrario* and it is justified by the fact that the process of decolonization is completed, thus the goal and intention of the creators of the covenant are fulfilled, so the self-determination processes should be considered only internal- as internal self determination within the frame of the existing state.

### ***Additional challenge - the extraterritorial application of human rights treaties***

The first challenge for the European states engaged in peace operations that included also dealing with terrorist attacks in Afghanistan and Iraq was the extraterritorial applicability of the European Convention of Human Rights and Fundamental Freedoms. The extraterritorial applicability of human rights was also confirmed by Human Rights Committee. Extraterritorial applicability of human rights means that state officials are also obliged with the internationally recognized human rights standards (to be more concrete, with the human rights instruments that are signed and ratified by the state they represent). There is not a consensus among state practice, but at least in theory, this concern is also to be taken into consideration. There is pretty wide consensus of the academic community and human rights bodies that extraterritorial applicability of human rights is acceptable and justified. The European Court of Human Rights is having an extensive practice in this field.

### ***Two regimes as *modus operandi*: proportionality and necessity in different context***

In a situation of de facto occupation (this also includes some of the peacekeeping or peace enforcement missions), applicability of the module for operating depends upon the effective control over the territory (Doswald-Beck 2006). If there is effective control over the territory (or at least for those parts that are under such control), the law enforcement module is the appropriate one. This means that officers operate as police forces. This module is based on the international human rights law and criminal law. It considers necessity, proportionality, and obligation to arrest rather than shoot whenever it's possible. If the criteria for effective control over the territory is lacking, the applicable model for operating is based on the international humanitarian law and the officers' act as soldiers in combat. Both regimes require necessity and proportionality, but defined differently: law enforcement model measures necessity and proportionality in accordance with the protection of the right to life, and the second module measures necessity and proportionality in conjunction with the military advantage that could be possibly gained.

## **ADDITIONAL LEGAL INTERSECTIONS**

Countering contemporary terrorist threats is closed with different legal branches such as international criminal law, human rights law and refugee law. It goes far behind national security systems and the classical notion of what security means. All legal aspects must be taken into consideration since inappropriate precedent can lead to greater mess and insecurity. International criminal law as such might be also a legal way out, but the implementation will be probably slower rather than the ongoing threats. The characterization of acts of terrorism as international crimes entails a different set of considerations (Paulussen 2012) and would result in a number of important consequences, not least the possible entitlement of all states to exercise universal jurisdiction (Macedo 2001) over alleged offenders, regardless of any treaty basis, under customary international law (Bianchi and Naqvi 2011).

## **CONCLUSION**


Framework that provides access must be based on legal grounds, from which arises the methodology of the counterterrorist operation, and the overall response to the removal of the threat and consequences.

An additional indicator that might be symptomatic is the answer of the question: who conducts counter-operation- whether it is the police, the military or some special units, and the model upon they operate.

A third factor is the bearer of terrorist activity: their motives, circumstances in which the act and the goal they want to achieve (the attack on al Qaeda on the United States are treated differently from cases in Russia, Paris, Northern Ireland, the attack in Norway or attacks in Afghanistan during the withdrawal of coalition forces).

Particularly complex is the derivation of counter terrorist operations by coalition forces that have different national mandates. Often these security forces are under the so called “national restrictions” (national caveats) (Defense. Gov News Article: National Caveats among Key Topics at NATO Meeting 2017) that are hard to be reconciled under the flag of the mission.

The position of the International Committee of the Red Cross is that existing humanitarian law should be aplikable whenever possible based on case by case analysis, or in the case of dealing with terrorism in the context of armed conflict, as it was in the case of Afghanistan.

In accordance with the Resolution 1456 of the Security Council of the United Nations from 2003, states must ensure that any measure taken to combat terrorism must comply with their obligations under international law, particularly international human rights law, refugee law and humanitarian law. This opinion was confirmed by the General Assembly in resolution 65/221 and in several occasion (UNODC 2009). Approaching terrorism threats and counter terrorist operations, legally speaking, should be always done on case by case analysis. There is no one solution to fit it all. However, rule of law and legal procedures, must be ensured in order the counterterrorist battle not to be converter in another form of threatening universal human rights values. 

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# ANARCHY







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